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*B. GRANT*



Ministry of  
the Attorney  
General

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# DISCUSSION DRAFT

# COURTS OF JUSTICE ACT

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8816  
ZB3  
O56  
1983  
c.1

MARCH 31, 1983



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DISCUSSION DRAFT

COURTS OF JUSTICE ACT

Foreword

In June 1980, after extensive research and discussion with the judiciary and the legal profession, the Report of the Civil Procedure Revision Committee was published. The Committee, chaired by the late Walter Williston, Q.C., made extensive recommendations regarding the law of civil procedure in Ontario, including a complete revision of the Rules of Practice of the Supreme, County and District Courts.

Since the Report was published, a special subcommittee of the Rules Committee, chaired by Mr. Justice Morden, has been devoting a great deal of time and effort to the preparation of the new Rules of Civil Procedure. The Ministry of the Attorney General has been assisting the subcommittee, which I understand hopes to complete its work on a final set of rules within the next few months.

As well as assisting the Morden subcommittee, the Ministry of the Attorney General has been working on a major revision of Ontario's court legislation. Among other important changes, this new legislation will provide the framework for the new Rules. The title of the new Act will be the Courts of Justice Act. The draft Act in this booklet does not reflect the final position of the Ministry, but is being published to promote public comment on the revision of the legislation dealing with Ontario's courts.

The booklet contains a section-by-section commentary on the draft Act referring to the corresponding provisions of the existing legislation and indicating where changes are proposed. Another part of the commentary discusses provisions of the existing court statutes that have not been included in the draft Courts of Justice Act.





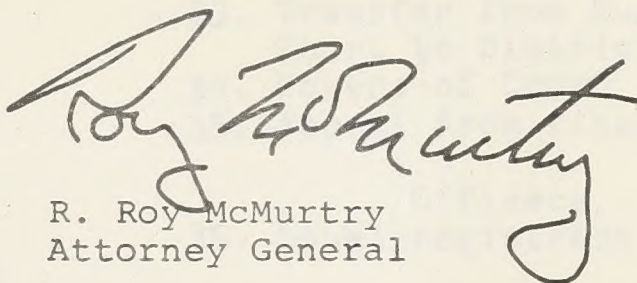


A number of the provisions in the draft Act are closely related to the new Rules. While the Ministry cannot release the new Rules until they are completed and approved by the Rules Committee, the commentary does attempt to indicate where the Act and the Rules fit together. Changes to the Rules by the Rules Committee may, of course, necessitate changes to the draft Act, but I am hopeful that any such changes will be relatively minor.

Comments on the draft Courts of Justice Act should be sent by May 15, 1983, to the Policy Development Division, Ministry of the Attorney General, 15th Floor, 18 King Street East, Toronto M5C 1C5.

March 31, 1983

R. Roy McMurtry  
Attorney General

A handwritten signature in dark ink, appearing to read "Roy McMurtry", is written over the typed name and title.



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PART A: DRAFT COURTS OF JUSTICE ACT







DRAFT COURTS OF JUSTICE ACT

An Act to revise and consolidate  
the Law respecting the Organization, Operation  
and Proceedings of Courts of Justice in Ontario

Interpretation

1. In this Act,

(a) "action" means a civil proceeding that is not an application and includes a proceeding commenced in the Supreme Court or the District Court by,

(i) statement of claim,

(ii) notice of action,

(iii) counterclaim,

(iv) crossclaim,

(v) third or subsequent party claim, or

(vi) divorce petition or counter-petition,

and a proceeding commenced in the Provincial Court (Civil Division) or a small claims court by claim;

(b) "application" means a civil proceeding in the Supreme Court or the District Court that is commenced by notice of application or a civil proceeding in the Unified Family Court, a surrogate court or the Provincial Court (Family Division) that is commenced by application;

(c) "defendant" means a person against whom an action is commenced;

(d) "hearing" includes a trial;

(e) "motion" means a motion in the course of a proceeding or an intended proceeding;

(f) "order" includes a judgment or decree;

COMMENTS

SECTION 1

The definitions of "action" and "application" are designed to fit with the new Rules of Civil Procedure. In the new Rules, there will be only two kinds of civil proceedings. An "action" is the common form of proceeding which includes pleadings, discovery and trial. An "application" replaces the existing originating notice of motion proceeding. Interlocutory motions during the course of a proceeding will no longer be called applications. The "District Court" referred to in the definitions is established by section 24 of the Act.

The term "defendant" is used in the Act and the new Rules to refer only to the person against whom an "action" is commenced.

"Hearing" is defined to include a trial in order to simplify drafting throughout the Act.

The definition of "motion" makes clear that motions are made in the course of a proceeding. As indicated above, the word "application" has a new meaning in the new Act and Rules and will no longer be used to refer to motions. A motion may also be made in an intended proceeding. For example, a motion for an interlocutory injunction may be made before an action is commenced if certain conditions are met.

The new Act and Rules use the word "order" as the general term for describing the mechanism by which courts give their decisions. Therefore, the term includes the final judgment in a proceeding and the decree that is issued in a divorce proceeding.

EXISTING PROVISIONS

Judicature Act:

1. In this Act,

(a) "action" means a civil proceeding commenced by writ or in such other manner as is prescribed by the rules;

(g) "defendant" includes a person served with a writ of summons or process, or served with notice of, or entitled to attend a proceeding;

(h) "judgment" includes an order;



DRAFT COURTS OF JUSTICE ACT

- (g) "plaintiff" means a person who commences an action;
- (h) "Rules of Civil Procedure" means the rules for the Supreme Court and the District Court under Part V.

PART I

SUPREME COURT OF ONTARIO

Organization

Supreme Court      2.-(1) The Supreme Court of Ontario is continued as a superior court of record having civil and criminal jurisdiction, with all the jurisdiction, power and authority historically exercised by courts of common law and equity in England and Ontario.

COMMENTS

Like the term "defendant", the word "plaintiff" is used in the new Act and Rules only in the context of "actions".

The "Rules of Civil Procedure" is the name that will be given to the new rules of court applicable to the Supreme Court and the District Court.

SECTION 2

Subsection (1) is derived from section 2 of the Judicature Act. The existing provision defines the Court's jurisdiction with reference to the 31st day of December, 1912. It is confusing to suggest that anything significant occurred to the Court's jurisdiction on that day. The date simply marks the day upon which an earlier version of the Judicature Act came into force which continued the Court's previous jurisdiction. That statute, in turn, defined the Court's jurisdiction with reference to earlier statutes.

An examination of those statutes indicates that the Supreme Court's jurisdiction includes the following:

- (a) The jurisdiction exercised by England's superior courts of common law (Queen's Bench, Common Pleas and Exchequer) on December 5, 1859: R.S.O. 1897, c.51, s.25; C.S.U.C. 1859, c.10, s.3.
- (b) The jurisdiction exercised in certain enumerated matters by England's Court of Chancery on March 4, 1837: R.S.O. 1897, c.51, s.26; (1837) 7 Wm. IV, c.2, s.2.
- (c) The jurisdiction exercised on June 10, 1857 by England's Court of Chancery as a court of equity to administer justice where no adequate remedy existed at law: R.S.O. 1897, c.51, s.28; (1857) 20 Vict., c.56, s.1.
- (d) The jurisdiction in respect of settled estates and minors' estates exercised by England's Court of Chancery on March 18, 1865: R.S.O. 1897, c.51, s.37; (1865) 28 Vict., c.17, s.1.
- (e) The equitable jurisdiction in matters of revenue exercised by England's Court of Exchequer on March 18, 1865: R.S.O. 1897, c.51, s.29; (1865) 28 Vict., c.17, s.2.
- (f) The jurisdiction exercised by Ontario's Courts of Queen's Bench, Common Pleas, Chancery,

EXISTING PROVISIONS

(q) "plaintiff" includes a person asking any relief otherwise than by way of counterclaim as a defendant against any other person by any form of proceeding;

2. The Supreme Court shall be continued as a superior court of record, having civil and criminal jurisdiction, and it has all the jurisdiction, power and authority that on the 31st day of December, 1912, was vested in or might be exercised by the Court of Appeal or by the High Court of Justice or by a divisional court of that court, and such jurisdiction, power and authority shall be exercised in the name of the Supreme Court.



DRAFT COURTS OF JUSTICE ACT		COMMENTS	EXISTING PROVISIONS
Branches	(2) The Supreme Court shall continue to consist of two branches, the Court of Appeal for Ontario and the High Court of Justice for Ontario.  R.S.O.1980,c.223,ss.2,3.	<p>Assize, Oyer and Terminer, and Gaol Delivery on August 22, 1881: R.S.O. 1897, c.51, s.41; S.O. 1881, c.5, s.9.</p> <p>The purpose of the new section is to describe the Supreme Court's jurisdiction more simply and comprehensively by stating that it has all the jurisdiction historically exercised by courts of common law and equity in England and Ontario.</p> <p>A word should be added about admiralty jurisdiction. The Supreme Court never received the jurisdiction of the English Court of Admiralty. However, England's superior courts of common law had concurrent jurisdiction in admiralty matters and that jurisdiction has been inherited by the Supreme Court of Ontario: <u>Shipman v. Phinn</u> (1914), 31 O.L.R. 113; <u>aff'd</u> (1914), 20 D.L.R. 596 (C.A.).</p> <p>The concluding words of the existing section, which state that the jurisdiction of the Supreme Court shall be exercised in the name of the Court, have been deleted as unnecessary. The forms of orders in the new Rules make clear that the High Court and the Court of Appeal both make their orders in the name of the Supreme Court.</p> <p>Subsection (2) is derived from section 3 of the <u>Judicature Act</u>.</p>	<p>3. The Supreme Court shall continue to consist of two branches, the Court of Appeal for Ontario and the High Court of Justice for Ontario.</p>
Court of Appeal	3.--(1) The Court of Appeal shall consist of the Chief Justice of Ontario, who shall be president of the court, the Associate Chief Justice of Ontario and fourteen other judges to be called justices of appeal.	<p>This section is derived from section 4 of the Judicature Act. Subsection 3(2) changes the existing provision slightly so that the Associate Chief Justice may act in place of the Chief Justice when the Chief Justice is absent from Ontario (instead of Toronto). Subsection (2) also permits the Associate Chief Justice to perform duties assigned by the Chief Justice.</p>	<p>4.--(1) The Court of Appeal shall consist of a chief justice who shall be president thereof and who shall be called the Chief Justice of Ontario, an Associate Chief Justice of Ontario, and fourteen other judges to be called justices of appeal.</p>
Absence of Chief Justice	(2) The Associate Chief Justice of Ontario shall exercise and perform such powers and duties as are assigned by the Chief Justice of Ontario, and where the Chief Justice is absent from Ontario or is for any reason unable to act, the powers and duties of the Chief Justice as president of the Court of Appeal shall be exercised and performed by the Associate Chief Justice or, where both are absent or unable to act, by the senior justice of appeal who is present and able to act. R.S.O.1980, c.223,s.4.	<p>(2) Where the Chief Justice of Ontario is absent from the Judicial District of York or where he is for any reason unable to act, his powers and duties as president of the Court of Appeal shall be exercised and performed by the Associate Chief Justice of Ontario in his stead or, where both are absent or unable to act, by the senior justice of appeal who is able to act.</p>	



DRAFT COURTS OF JUSTICE ACT		COMMENTS	EXISTING PROVISIONS
High Court	4.--(1) The High Court shall consist of the Chief Justice of the High Court, who shall be president of the court, the Associate Chief Justice of the High Court and such number of other judges as is fixed under subsection (2). R.S.O.1980, c.223,s.5(1).	SECTION 4  This section is derived from section 5 of the Judicature Act. Subsection (3) permits the Associate Chief Justice to perform duties assigned by the Chief Justice.	5.--(1) The High Court shall consist of a chief justice who shall be the president thereof and who shall be called the Chief Justice of the High Court, an Associate Chief Justice of the High Court, and such number of other judges as is fixed by the regulations.
Number of judges	(2) The Lieutenant Governor in Council may by regulation fix the number of judges of the High Court who are in addition to the Chief Justice and Associate Chief Justice, but where the number is reduced by regulation, the reduction shall not be applied to affect appointments existing at the time of the reduction. 1981,c.23,s.2(2).		(1a) The Lieutenant Governor in Council may by regulation fix the number of judges of the High Court who are in addition to the Chief Justice and Associate Chief Justice, but where the number is reduced by regulation, the reduction shall not be applied to affect appointments existing at the time of the reduction.
Absence of Chief Justice	(3) The Associate Chief Justice of the High Court shall exercise and perform such powers and duties as are assigned by the Chief Justice of the High Court, and where the Chief Justice of the High Court is absent from Ontario or is for any reason unable to act, all the powers and duties of the Chief Justice of the High Court shall be exercised and performed by the Associate Chief Justice of the High Court or, where both are absent or unable to act, by the senior judge of the High Court who is present and able to act. R.S.O.1980,c.223,s.5(2).		(2) Where the Chief Justice of the High Court is absent from Ontario or where he is for any reason unable to act, his powers shall be exercised and his duties performed by the Associate Chief Justice of the High Court in his stead or, where both are absent or unable to act, by the senior judge of the High Court who is able to act.

DRAFT COURTS OF JUSTICE ACT		COMMENTS	EXISTING PROVISIONS
Divisional Court	<p>5.--(1) There shall be a division of the High Court to be known as the Divisional Court of the High Court of Justice for Ontario consisting of the Chief Justice of the High Court who shall be president of the court and such other judges of the Divisional Court as may be designated by him from time to time.</p> <p>(2) Every judge of the High Court is also a judge of the Divisional Court.</p>	<p>SECTION 5</p> <p>This section is the same as section 7 of the <u>Judicature Act</u>.</p>	<p>7.--(1) There shall be a division of the High Court to be known as the Divisional Court of the High Court of Justice for Ontario consisting of the Chief Justice of the High Court who shall be president of the court and such other judges of the Divisional Court as may be designated by him from time to time</p> <p>(2) Every judge of the High Court is also a judge of the Divisional Court.</p>
Jurisdiction of judges	<p>(2) Every judge of the High Court is also a judge of the Divisional Court. R.S.O.1980,c.223, s.7.</p>		
Additional judges	<p>6.--(1) For each of the offices of Chief Justice of Ontario and Associate Chief Justice of Ontario there shall be such additional offices of judges of the Court of Appeal as are from time to time required to be held by Chief Justices of Ontario and Associate Chief Justices of Ontario who have elected under the <u>Judges Act</u> (Canada) to perform only the duties of a judge of the Court of Appeal.</p> <p>(2) For each of the offices of Chief Justice of the High Court and Associate Chief Justice of the High Court there shall be such additional offices of judge of the High Court as are from time to time required to be held by Chief Justices of the High Court and Associate Chief Justices of the High Court who have elected under the <u>Judges Act</u> (Canada) to perform only the duties of a judge of that court.</p>	<p>SECTION 6</p> <p>Subsections (1) and (2) are new provisions intended to implement, in Ontario, provisions of the <u>Judges Act</u> (Canada) that permit Chief Justices and Associate Chief Justices, after ten years in office, to elect to serve only as a judge.</p>	
R.S.C.1970, c.J-1			
Idem			



DRAFT COURTS OF JUSTICE ACT	COMMENTS	EXISTING PROVISIONS
<p>Supernumerary judges</p> <p>R.S.C.1970, c.J-1</p>	<p>Subsection (3) is the same as section 6 of the <u>Judicature Act</u>.</p>	<p>6. For each office of judge of the Court of Appeal and of the High Court of Justice there shall be the additional office of supernumerary judge held by a judge of such court who has elected under the <i>Judges Act</i> (Canada) to hold office only as a supernumerary judge of that court.</p>
<p>Rank and precedence</p>	<p>SECTION 7</p> <p>Subsection (1) is derived from section 8 of the <u>Judicature Act</u>. Although the structure of the provision has been changed, there is no change in substance.</p>	<p>8.—(1) The Chief Justice of Ontario has rank and precedence over all the other judges.</p> <p>(2) The Chief Justice of the High Court has rank and precedence next after the Chief Justice of Ontario.</p> <p>(3) The Associate Chief Justice of Ontario has rank and precedence next after the Chief Justice of the High Court and the Associate Chief Justice of the High Court has rank and precedence next after the Associate Chief Justice of Ontario.</p> <p>(4) The justices of appeal and the other judges have rank and precedence after the Associate Chief Justice of the High Court, and among themselves according to seniority of appointment.</p>
<p>Justice of Appeal</p>	<p>Subsection (2) is a new provision intended to clarify that, among themselves, judges of the Court of Appeal have rank and precedence in accordance with the dates of their appointments to the Court of Appeal.</p>	<p>9. A judge appointed to the Court of Appeal or to the High Court is a judge of the Supreme Court and is <i>ex officio</i> a judge of the branch of which he is not a member, and, except where it is otherwise expressly provided, all the judges of the Supreme Court have in all respects equal jurisdiction, power and authority.</p>
<p>Jurisdiction of judges</p>	<p>SECTION 8</p> <p>This section is derived from section 9 of the <u>Judicature Act</u>.</p>	

DRAFT COURTS OF JUSTICE ACT	COMMENTS	EXISTING PROVISIONS
<p>Assignment of judges to another court</p> <p>Idem</p> <p>9.--(1) The Chief Justice of Ontario may assign a Judge of the Court of Appeal to perform, in Toronto, the work of a judge of the High Court.</p> <p>(2) The Chief Justice of Ontario, with the concurrence of the Chief Justice of the High Court, may assign a judge of the High Court to sit as a member of the Court of Appeal. R.S.O.1980,c.223, s.42(1,2).</p>	<p>SECTION 9</p> <p>This section replaces section 15, subsections 42(1) to (4) and section 43 of the Judicature Act. These provisions permit a judge of the Supreme Court to be assigned from time to time to sit in the branch of which he or she is not a member.</p>	<p>15. Upon the request of the judge or judges for or with whom he is requested to sit or act, or upon the request of the Chief Justice of Ontario or of the Chief Justice of the High Court, any judge of the Supreme Court may sit and act as a judge of either of the branches of the Supreme Court, or perform any other official or ministerial act for or on behalf of any judge absent from illness or any other cause, or in the place of any judge whose office has become vacant, or as an additional judge of the Court of Appeal, and while so sitting and acting, any such judge has all the power and authority of a judge of the Supreme Court</p> <p>42.--(1) The Chief Justice of Ontario may assign any justice of appeal not sitting in the Court of Appeal to perform, in Toronto, the work of a judge of the High Court</p> <p>(2) Whenever occasion requires, a judge who is not a member of the Court of Appeal may sit in the place of a judge of the Court of Appeal</p> <p>(3) Subsection (2) applies where a vacancy occurs in the Court of Appeal by death or resignation of a judge or otherwise, until his successor is appointed</p> <p>(4) A judge who sits in the place of a judge of the Court of Appeal shall be conclusively deemed to have been entitled and qualified to so sit within the meaning of subsections (2) and (3)</p> <p>43. Except as provided in section 42, neither the Chief Justice of Ontario nor any of the justices of appeal shall, without his consent, be assigned to or required to perform any duty except as such appertains to him as a member of the Court of Appeal</p>



DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

Annual meeting  
of judges

10.-(1) A meeting of the judges of the Supreme Court shall be held in Toronto at least once in each year, on a day fixed by the Chief Justice of Ontario, for the purpose of considering this Act, the Rules of Civil Procedure and the administration of justice generally.

Recommendations

(2) The judges shall report their recommendations to the Attorney General.  
R.S.O.1980,c.223,s.118(1,2).

Local judges

11.-(1) Every District Court judge may be appointed as a local judge of the High Court.

Jurisdiction

(2) Every local judge has the jurisdiction in respect of motions and applications in the Supreme Court that is conferred by the Rules of Civil Procedure.

Idem

(3) Every local judge has all the jurisdiction of a judge of the High Court in proceedings under the Divorce Act (Canada) and, where a claim for other relief is joined in a petition for divorce, a local judge has the same jurisdiction in respect of the claim as a judge of the High Court.

R.S.C.1970,  
c.D-4

SECTION 10

This section is derived from section 118 of the Judicature Act.

SECTION 11

This section is derived from section 121 of the Judicature Act. Subsection (1) is slightly different from the opening words of subsection 121(1) of the existing Act to avoid the possible implication that provincial legislation makes District Court judges local judges of the High Court. Local judges can only be appointed by the federal government.

Subsection (2) provides that the jurisdiction of local judges in respect of motions and applications is to be conferred in the Rules of Civil Procedure. This replaces the concluding words of subsection 121(1) of the existing Act. The new Rules greatly expand the jurisdiction of local judges to hear Supreme Court applications and, outside Toronto, motions in Supreme Court proceedings.

Subsection (3) is derived from subsection 121(3) of the Judicature Act.

118.-(1) A council of the judges of the Supreme Court, of which due notice shall be given to all of them, shall assemble at least once in every year on such day as may be fixed by the Chief Justice of Ontario for the purpose of considering the operation of this Act and of the rules and the working of the offices and the arrangements relative to the duties of the officers of the court, and of enquiring and examining into any defects that appear to exist in the system of procedure or the administration of justice in the Supreme Court or in any other court or by any other authority.

(2) The council shall report to the Attorney General what amendments or alterations, if any, it would be expedient to make in this Act or otherwise relating to the administration of justice, and what other provision, if any, it would be expedient to make for the better administration of justice.

(3) An extraordinary council for the purposes mentioned in subsection (1) may also be convened at any time by the Lieutenant Governor in Council.

121.-(1) Every judge of a county court is a local judge of the High Court for the purposes of his jurisdiction in actions in the Supreme Court, and may be styled a local judge of the Supreme Court, and has, in all causes and actions in the Supreme Court, subject to the rules, power and authority to do and perform all such acts and transact all such business in respect of matters and causes in or before the High Court as he is by statute or the rules empowered to do and perform.

(3) Without limiting the generality of subsections (1) and (2), the jurisdiction of the local judges of the High Court extends to the exercising of all such powers and authorities and the performing of such acts and the transacting of all such business as may be exercised, performed or transacted by the Supreme Court or a judge thereof under the Divorce Act (Canada) and, where a claim for other relief is joined in a petition for divorce, the local judges of the High Court have the same jurisdiction and authorities to deal with such claim as may be exercised by the Supreme Court or a judge thereof.

DRAFT COURTS OF JUSTICE ACT		COMMENTS		EXISTING PROVISIONS	
Idem	(4) A local judge may act in any county or district. R.S.O.1980,c.223,s.121.		Subsection (4) is derived from subsection 121(2) of the existing Act.		(2) Where a county court judge is authorized to exercise jurisdiction in a county other than the county for which he is appointed, he has, while exercising jurisdiction in such county, the like power as a local judge of the High Court as though he were a judge of the county court of such county.
High Court Jurisdiction	<p>Jurisdiction</p> <p>12.--(1) Unless otherwise provided, proceedings in the Supreme Court shall be in the High Court. <u>New.</u></p> <p>(2) Subject to the <u>Divorce Act</u> (Canada), an appeal lies to the High Court from,</p> <p>(a) an interlocutory order of a master or other officer of the High Court;</p> <p>(b) an interlocutory order of a local judge of the High Court, where the order could have been made by a master;</p> <p>(c) a certificate of assessment of costs issued in a proceeding in the Supreme Court, where the appeal is on an issue in respect of which an objection was served under the Rules of Civil Procedure. <u>New.</u></p>		<p>Subsection (1) provides that the High Court is the branch of the Supreme Court that exercises original jurisdiction.</p> <p>Subsection (2) states the appellate jurisdiction of the High Court. A reference to the <u>Divorce Act</u> (Canada) is included to alert the reader that special appeal routes are provided in divorce proceedings.</p> <p>Clauses (2)(a) and (b) are derived from existing rule 514(1). An appeal is provided to the High Court from an interlocutory order of a local judge only if the order could have been made by a master. This is because of the expanded jurisdiction that will be given to local judges in the new Rules. Where a local judge makes an interlocutory order that cannot be made by a master, the local judge will be exercising a jurisdiction that, under the existing law, can only be exercised by a judge of the High Court. Appeals from such orders will continue to be taken to the Divisional Court. Only if the interlocutory order could have been made by a master will the appeal from the local judge's decision go to the High Court.</p> <p>Clause (2)(c) is derived from existing rule 516(2).</p>		<p>514.--(1) Except in the case of an interim order for corollary relief under the <u>Divorce Act</u> (Canada), a person affected by an interlocutory judgment or order made by the Master, local judge, local master or other officer, may appeal therefrom to a judge.</p> <p>516.--(2) In other cases, a party dissatisfied with the decision of a taxing officer upon any question of principle or as to any item respecting which objections have been duly filed, may appeal from the certificate of the taxing officer to a judge, and the practice upon the appeal shall be the same as upon an appeal from an order made by the Master.</p>
Composition of court for hearings	13.--(1) Unless otherwise provided by statute or the Rules of Civil Procedure, every proceeding in the High Court shall be heard and determined by one judge. R.S.O.1980,c.223,s.45(1,2).		<p>Subsection (1) is derived from subsections 45(1) and (2) of the <u>Judicature Act</u>.</p>		<p><u>Judicature Act:</u></p> <p>45.--(1) Every action and proceeding in the High Court and all business arising out of it, except as herein otherwise expressly provided, shall be heard, determined and disposed of before a judge, and where he sits in court, he constitutes the court</p> <p>(2) Subject to section 34, a judge of the High Court shall decide all questions coming properly before him, and shall not reserve any case, or any point in a case, for the consideration of the Court of Appeal</p>



DRAFT COURTS OF JUSTICE ACT		COMMENTS	EXISTING PROVISIONS
Sittings	(2) The sittings of the High Court and the assignment of judges thereto shall be determined by the judges of the High Court, with power in the Chief Justice of the High Court to make such readjustment or reassignment as is necessary from time to time. R.S.O.1980,c.223,s.45(3).	Subsection (2) is derived from subsection 45(3) of the <u>Judicature Act</u> .	<del>45</del> (3) All such arrangements as may be necessary or proper for the holding of any of the courts, or the transaction of business in the High Court, or the arrangement from time to time of judges to hold such courts, or to transact such business, shall be made by the judges of that branch, with power in the Chief Justice of the High Court to make such readjustment or reassignment as is necessary from time to time.
Idem	(3) At least two sittings of the High Court shall be held in each year in every county and district. R.S.O.1980,c.223,s.48(6).	Subsection (3) is derived from subsection 48(6) of the <u>Judicature Act</u> .	<del>48</del> (6) Subject to the rules, at least two sittings shall be held in each year in and for every county, and additional sittings shall be provided when necessary for the due dispatch of business.
Divisional Court Jurisdiction	14.-(1) Subject to the <u>Divorce Act</u> (Canada), an appeal lies to the Divisional Court from,	SECTION 14  This section is derived from section 17 of the <u>Judicature Act</u> . Subsection (1) makes clear that the section grants a right of appeal; it does not simply give the Court jurisdiction to hear appeals provided for elsewhere. This accords with the interpretation that has been given to section 17. The provision also makes clear that all these rights of appeal are subject to the special appeal provisions of the <u>Divorce Act</u> (Canada), not only the right of appeal from final orders of local judges under the <u>Divorce Act</u> .  Clause (1)(a) is derived from clause 17(b) of the <u>Judicature Act</u> . Clause (1)(b) provides for a corresponding right of appeal for interlocutory orders of a local judge. As indicated earlier, the new Rules will permit local judges to make orders that, under the existing law, can only be made by judges of the High Court. Clause (1)(b) states that these orders will continue to be appealed to the Divisional Court.	17. The Divisional Court has jurisdiction to hear, determine and dispose of,  (a) applications and appeals referred to the Divisional Court under any Act;  (b) all appeals from interlocutory judgments or orders of a judge of the High Court with leave as provided in the rules;  (c) all appeals from final judgments or orders of the master, local judge, local master, or other officer of the Supreme Court, except final judgments or orders made by a local judge under the <i>Divorce Act</i> (Canada).
R.S.C.1970, c.D-8	(a) an interlocutory order of a judge of the High Court, with leave as provided in the Rules of Civil Procedure;  (b) an interlocutory order of a local judge of the High Court, with leave as provided in the Rules of Civil Procedure, except where the order could have been made by a master;  (c) a final order of a master or other officer of the High Court;  (d) a final order of a local judge of the High Court, where the order could have been made by a master.	Clauses (1)(c) and (d) are derived from clause 17(c) of the <u>Judicature Act</u> .  Clause 17(a) of the <u>Judicature Act</u> has not been included. Where another statute gives jurisdiction to the Divisional Court, there is no need for the grant of jurisdiction to be repeated in the <u>Courts of Justice Act</u> .	

DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

Combining of appeals lying to High Court

(2) Where an appeal in a proceeding lies to the High Court and an appeal in the same proceeding lies to and is taken to the Divisional Court, the Divisional Court has jurisdiction to hear and determine the appeal that lies to the High Court at the same time as the appeal to the Divisional Court. New.

Composition of court for hearings

15.--(1) Unless otherwise provided, every proceeding in the Divisional Court shall be heard and determined by three judges sitting together.

Idem

(2) A proceeding in the Divisional Court may be heard and determined by one judge where the proceeding,

(a) is an appeal under clause 14(1)(c) or (d);

R.S.O.1980, c.476

(b) is an appeal under the Small Claims Courts Act; or

(c) is in a matter that the Chief Justice of the High Court or a judge designated by the Chief Justice is satisfied, from the nature of the issues involved and the necessity for expedition, can and ought to be heard and determined by one judge. R.S.O.1980, c.223, s.46.

Idem

(3) A motion in an application or appeal in the Divisional Court, except a motion for leave to appeal, may be heard and determined by one judge, but,

(a) the judge may adjourn the motion to a panel of the Divisional Court;

(b) where the motion is heard by one judge and the decision on the motion disposes of the application or appeal, an appeal therefrom lies to a panel of the Divisional Court. R.S.O.1980, c.223, s.40.

Subsection (2) is a new provision intended to deal with a problem that occasionally arises under the existing law. For example, on a motion, a master can make a final order and, on the same motion, an interlocutory order. Without subsection (2), the final order would be appealable to the Divisional Court, but the interlocutory order would be appealable to a judge of the High Court. Subsection (2) gives the Divisional Court jurisdiction to hear both appeals.

SECTION 15

Subsection (1) is derived from subsection 46(1) of the Judicature Act. The requirement that proceedings in the Divisional Court be presided over by the Chief Justice of the High Court, or his designee, has been deleted as unnecessary.

Subsection (2) is derived from subsection 46(2) of the Judicature Act. A reference to appeals under the Small Claims Courts Act has been added, since most appeals under that Act are now dealt with by one judge. With respect to all these appeals, the Chief Justice of the High Court retains the discretion to assign three judges.

Subsection (3) is derived from section 40 of the Judicature Act. The new provision is intended to permit more motions to be dealt with by one judge.

46.--(1) Except where otherwise provided, every proceeding in the Divisional Court shall be heard, determined and disposed of before three judges thereof sitting together of whom one shall be the Chief Justice of the High Court or a judge of the High Court designated by him, and the sitting shall be presided over by the Chief Justice of the High Court or his designee.

(2) A proceeding in the Divisional Court may be heard, determined and disposed of by a judge of the Divisional Court sitting singly where the proceeding,

(a) is an appeal under clause 17 (c), or

(b) is in a matter that the Chief Justice of the High Court or a judge designated by him is satisfied, from the nature of the issues involved and the necessity for expedition, can and ought to be heard by a judge sitting singly.

40. In any cause or matter pending before the Divisional Court, any direction incidental to it not involving the decision of the appeal may be given by a judge of that court, and a judge of that court may, during vacation, make any interim order that he thinks fit to prevent prejudice to the claim of any of the parties pending an appeal, but every such order is subject to appeal to the Divisional Court



DRAFT COURTS OF JUSTICE ACT

Sittings

(4) Sittings of the Divisional Court shall be held at such times and in such places as the Chief Justice of the High Court directs. R.S.O.1980, c.223,s.46(4).

Court of Appeal jurisdiction

16.--(1) An appeal lies to the Court of Appeal from,

- (a) an order of the Divisional Court, on a question that is not a question of fact alone, with leave as provided in the Rules of Civil Procedure;
- (b) a final order of a judge of the High Court;
- (c) a final order of a local judge of the High Court, except where the order could have been made by a master. R.S.O.1980, c.223,s.28(1).

Combining of appeals lying to other courts

(2) Where an appeal in a proceeding lies to the Divisional Court or High Court, and an appeal in the same proceeding lies to and is taken to the Court of Appeal, the Court of Appeal has jurisdiction to hear and determine the appeal that lies to the Divisional Court or High Court at the same time as the appeal to the Court of Appeal.  
New.

Composition of court for hearings

17.--(1) Unless otherwise provided, every proceeding in the Court of Appeal shall be heard and determined by not fewer than three judges sitting together, and always by an uneven number of judges.

Idem

R.S.C.1970, c.D-8

(2) An appeal to the Court of Appeal from an interim order under section 10 of the Divorce Act (Canada) may be heard and determined by one judge, unless it is to be heard with an appeal that, but for subsection 16(2), would have been heard by three judges of the Divisional Court. R.S.O.1980, c.223,s.41.

COMMENTS

Subsection (4) replaces subsection 46(4) of the Judicature Act. Experience indicates that the Divisional Court rarely sits outside Toronto. However, the proposed provision will permit the Chief Justice of the High Court to arrange sittings of the Divisional Court anywhere in Ontario.

SECTION 16

This provision is derived largely from section 28 of the Judicature Act. Clause (1)(a) is derived from clause 28(1)(b) of the existing Act. Clause (1)(b) is derived from clause 28(1)(a) of the existing Act. Clause (1)(c) provides for an appeal from final orders of local judges since, under the new Rules, local judges will be making orders that are now made by High Court judges and appealed to the Court of Appeal.

Subsection (2) is a new provision that is intended to resolve problems that have arisen where appeals from different orders made at a single hearing lie to different courts. The subsection provides that the Court of Appeal has jurisdiction to determine all of the appeals.

SECTION 17

Subsection (1) is derived from subsection 41(1) of the Judicature Act.

Subsection (2) is derived from subsection 41(2) of the Judicature Act. If an appeal from an order under section 10 of the Divorce Act is to be heard with an appeal that would otherwise have been heard by three judges of the Divisional Court, the appeals will be heard by three judges of the Court of Appeal.

EXISTING PROVISIONS

(4) In accordance with the rules, sittings of the Divisional Court shall be held in Toronto continuously, except during vacations and holidays, and shall be held in London, Ottawa, Sudbury, Sault Ste. Marie and Thunder Bay at such times as the Chief Justice of the High Court may fix for the expeditious dispatch of the matters set down for hearing at those places.

28.--(1) Except where it is otherwise provided by statute and subject to the rules regulating the terms and conditions on which appeals may be brought, an appeal lies to the Court of Appeal from,

- (a) any final judgment or order of a judge of the High Court, whether at trial or otherwise; or
- (b) any judgment or order of the Divisional Court, with leave as provided by the rules, on any question that is not a question of fact alone.

41.--(1) Except where otherwise provided, every appeal to the Court of Appeal shall be heard before not fewer than three justices of appeal sitting together, and always before an uneven number of justices.

(2) An appeal to the Court of Appeal from an interlocutory order for corollary relief under the Divorce Act (Canada) may be heard without leave before one justice of appeal sitting alone.

DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

Idem	(3) A motion in an appeal to the Court of Appeal, except a motion for leave to appeal, may be heard and determined by one judge, but,  (a) the judge may adjourn the motion to a panel of the Court of Appeal;  (b) where the motion is heard by one judge and the decision on the motion disposes of the appeal, an appeal therefrom lies to a panel of the Court of Appeal. R.S.O.1980,c.223,s.33.	Subsection (3) is derived from section 33 of the Judicature Act. The new provision is intended to permit more motions to be dealt with by one judge.	33. In any cause or matter pending before the Court of Appeal, any direction incidental to it not involving the decision of the appeal may be given by a judge of that court, and a judge of that court may, during vacation, make any interim order that he thinks fit to prevent prejudice to the claim of any of the parties pending an appeal, but every such order is subject to appeal to the Court of Appeal.
Presiding Judge	(4) The senior judge on a panel of the Court of Appeal shall preside but, where the senior judge is a supernumerary judge, the Chief Justice of Ontario, on the request of the senior judge, may designate another judge to preside. <u>New.</u>	Subsection (4) is derived from section 44 of the Judicature Act. The new provision permits an exception to the general rule in the case of supernumerary judges.	44. The Chief Justice of Ontario, when present, shall preside and, in his absence, the senior justice present shall preside.
Sittings	(5) The Chief Justice of Ontario has general supervision and direction over the sittings of the Court of Appeal and the assignment of the judicial duties of the court. R.S.O.1980,c.223,s.41(4).	Subsection (5) is derived from subsections 16(2) and 41(4) of the Judicature Act.	16(2) Subject to subsection (1), the Court of Appeal shall sit at Toronto.  41(4) The justices to sit from time to time and the appeals to be heard shall be determined by the Chief Justice of Ontario
References to Court of Appeal	18.-(1) The Lieutenant Governor in Council may refer any question to the Court of Appeal for hearing and consideration.	SECTION 18  This provision replaces the Constitutional Questions Act. The power to refer questions to a judge of the Supreme Court has been deleted, as recommended by the Ontario Law Reform Commission in its 1973 Report on Administration of Ontario Courts, Part I, p. 117. As the Report notes, since 1900, there has never been a reference to a judge of the Supreme Court.	Constitutional Questions Act:  1. The Lieutenant Governor in Council may refer to the Court of Appeal or to a judge of the Supreme Court for hearing and consideration any matter that he thinks fit, and the court or judge shall thereupon hear and consider the matter so referred.
Opinion of court	(2) The court shall certify its opinion to the Lieutenant Governor in Council, accompanied by a statement of the reasons therefor, and any judge who differs from the opinion may in like manner certify his or her opinion and reasons.		2. The court or judge shall certify to the Lieutenant Governor in Council its or his opinion on the matter referred, accompanied by a statement of the reasons therefor, and, in the case of a reference to the Court of Appeal, any judge who differs from the opinion may in like manner certify his opinion and his reasons.
Submissions by Attorney General	(3) On the hearing of the question, the Attorney General of Ontario is entitled to make submissions to the court.		



DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

Idem

(4) Where a question relates to the constitutional validity or constitutional applicability of an enactment of the Parliament of Canada or the Legislature, the Attorney General of Canada shall be notified and is entitled to make submissions to the court.

Notice

(5) The court may direct that any person interested, or any one or more persons as representatives of a class of persons interested, be notified of the hearing and be entitled to make submissions to the court.

Appointment of counsel

(6) Where an interest affected is not represented by counsel, the court may request counsel to argue on behalf of the interest, and the reasonable expenses thereof shall be paid by the Treasurer of Ontario.

Appeal

(7) The opinion of the court shall be deemed to be a judgment of the court and an appeal lies therefrom as from a judgment in an action. R.S.O. 1980, c. 86.

Masters

Officers

19.-(1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint such masters of the Supreme Court as are considered necessary. R.S.O. 1980, c. 223, s. 96(1).

Qualifications

(2) No person shall be appointed as a master unless he or she has been a member of the bar of one of the provinces of Canada for at least ten years.

Jurisdiction

(3) Every master has the jurisdiction conferred by the Rules of Civil Procedure. New.

3. Where the matter relates to the constitutional validity of an Act of the Legislature or a provision thereof, the Attorney General for Canada shall be notified of the hearing in order that he may be heard if he sees fit

4. The court or judge may direct that any person interested, or, where there is a class of persons interested, any one or more persons as representatives of the class, be notified of the hearing, and such persons are entitled to be heard

5. Where an interest affected is not represented by counsel, the court or judge may request counsel to argue the case in such interest, and the reasonable expenses thereof shall be paid by the Treasurer of Ontario out of any money appropriated by the Legislature and applicable for that purpose.

6. The opinion of the judge shall be deemed a judgment of the court, and an appeal lies therefrom as from a judgment in an action.

7. Where an appeal is had to the Court of Appeal, sections 2 to 5 apply as if the original reference had been to the Court of Appeal.

Judicature Act:

96.-(1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint such masters of the Supreme Court as are considered necessary.

SECTION 19

Subsection (1) is derived from subsection 96(1) of the Judicature Act.

Subsection (2) deals with a recommendation of the Gale Report on the Provincial Courts Act. Recommendation No. 1 of the Report (at p. 72) was that provincial judges and masters should have at least five years membership at the bar before their appointment. Subsection (2) adopts a ten year requirement, the same requirement that applies to federally-appointed judges.

Subsection (3) provides that the jurisdiction of masters will be conferred in the Rules of Civil Procedure.

DRAFT COURTS OF JUSTICE ACT	COMMENTS	EXISTING PROVISIONS
<p>Regulations</p> <p>(4) The Lieutenant Governor in Council may make regulations,</p> <p>(a) fixing the remuneration of masters;</p> <p>(b) providing for the benefits to which masters are entitled, including,</p> <p>(i) leave of absence and vacations,</p> <p>(ii) sick leave credits and payments in respect of such credits,</p> <p>(iii) pension benefits for masters and their surviving spouses and children,</p> <p>and for the transfer or other disposition of benefits in respect thereof to which persons appointed as masters under this section were entitled under the Public Service Act or the Public Service Superannuation Act at the time of their appointment under this section or a predecessor thereof.</p> <p>R.S.O.1980, c.418, 419</p> <p>Senior Master</p> <p>(5) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint a master as Senior Master.</p> <p>Duties</p> <p>(6) The Senior Master has general supervision and direction over the sittings of the masters and the assignment of their judicial duties.</p> <p>Temporary appointments</p> <p>(7) The Attorney General may designate masters to act in the place of the Senior Master for all purposes during his or her absence or inability to act.</p> <p>R.S.O.1980, c.223, s.99.</p>	<p>Subsection (4) is derived from subsection 100(1) of the <u>Judicature Act</u>.</p> <p>Subsections (5), (6) and (7) are derived from section 99 of the <u>Judicature Act</u>.</p>	<p>100.—(1) The Lieutenant Governor in Council may make regulations,</p> <p>(a) fixing the remuneration of masters,</p> <p>(b) providing for the benefits to which masters are entitled, including,</p> <p>(i) leave of absence and vacations,</p> <p>(ii) sick leave credits and payments in respect of such credits,</p> <p>(iii) pension benefits for masters and their widows and surviving children,</p> <p>and for the transfer or other disposition of benefits in respect thereof to which persons appointed as masters under this Act were entitled under the <i>Public Service Act</i> or the <i>Public Service Superannuation Act</i> at the time of their appointment under this Act.</p> <p>99.—(1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint a master as Senior Master</p> <p>(3) The Senior Master shall have general supervision and direction over the administration of the offices of the masters and arranging and assigning masters for hearings as circumstances require</p> <p>(2) The Attorney General may designate masters to act in the place of the Senior Master for all purposes during his illness or absence.</p>



DRAFT COURTS OF JUSTICE ACT

Application  
of ss.53-60,65

(8) Sections 53 to 60 and section 65 apply with necessary modifications to masters and the Senior Master in the same manner as to provincial judges and a chief judge, respectively. R.S.O.1980,c.223, ss.96(2-4),97,98.

COMMENTS

Subsection (8) makes a number of provisions dealing with provincial judges applicable to masters. These provisions include those dealing with extra-judicial employment (s. 53), retirement (s.54), resignation (s.55), removal for cause (s.56), the Judicial Council (ss.57, 58 and 59) and the Supreme Court inquiry into the question of removal for cause (s.60). These provisions replace subsections 100(2) and (3), subsections 96(2), (3), and (4), section 97 and section 98 of the Judicature Act. Subsection (8) also makes section 65 applicable so that the Senior Master may, after ten years in office, elect to serve only as a master.

EXISTING PROVISIONS

100(2) Subject to subsection (3), unless authorized by the Lieutenant Governor in Council, a master shall not practise or actively engage in any business, trade or occupation but shall devote his whole time to the performance of his duties as a master.

(3) A master, with the previous consent of the Attorney General, may act as arbitrator or conciliator.

96(2) A master may be removed from office before attaining retirement age only for misbehaviour or for inability to perform his duties properly and only if,

(a) the circumstances respecting the misbehaviour or inability are first inquired into; and

(b) the master is given reasonable notice of the time and place for the inquiry and is afforded an opportunity, by himself or his counsel, of being heard and of cross-examining the witnesses and of producing evidence on his own behalf.

(3) For the purpose of making an inquiry under subsection (2), the Lieutenant Governor in Council may appoint one or more judges of the Supreme Court who shall make the inquiry and report thereon, and a judge so appointed has, for that purpose, the powers of a commissioner under Part II of the *Public Inquiries Act*, which Part applies to such inquiry as if it were an inquiry under that Act.

(4) An order removing a master from office under this section may be made by the Lieutenant Governor in Council and the order and the report of the inquiry shall be laid before the Legislative Assembly if it is in session or, if not, within fifteen days after the commencement of the next ensuing session

97.—(1) Every master shall retire upon attaining the age of sixty-five years.

(2) Notwithstanding subsection (1), a master appointed before the 2nd day of December, 1968 shall retire upon attaining the age of seventy years.

(3) Upon attaining an age for retirement under subsection (1) or (2), a master may be reappointed to hold office during pleasure but shall not hold office after attaining the age of seventy-five years.

(4) A master may at any time resign his office in writing, signed by him and delivered to the Attorney General

98. The Judicial Council for Provincial Judges established under the *Provincial Courts Act* has the same powers and shall perform the same duties in respect of the appointment of and investigation of complaints against masters as it has or may perform in respect of provincial judges

DRAFT COURTS OF JUSTICE ACT		COMMENTS	EXISTING PROVISIONS
Registrar	20.-(1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint a Registrar of the Supreme Court of Ontario.	SECTION 20  Subsection (1) gives statutory recognition to the office of Registrar of the Supreme Court. Previously, the Registrar was appointed under section 83 of the Judicature Act, a general provision permitting the appointment of Officers of the Supreme Court. Deputy Registrars of the Supreme Court may be appointed by the Lieutenant Governor in Council under the authority of clause 27(o) of the Interpretation Act.	
Local registrars	(2) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint a local registrar of the Supreme Court for each county and district. <u>New.</u>	Up to now, local registrars of the Supreme Court have also been appointed under section 83 of the Judicature Act. Subsection (2) gives specific statutory recognition to this office.	
Deputy local registrars	(3) With the approval of the Attorney General, every local registrar may appoint a deputy local registrar who may exercise and perform all the powers and duties of the local registrar.  R.S.O.1980,c.223,s.85.	Subsection (3) is derived from section 85 of the Judicature Act. The new provision requires the approval of the Attorney General instead of the approval of the Lieutenant Governor in Council.	85. With the approval of the Lieutenant Governor in Council, every local officer of the Supreme Court, county court clerk, and surrogate registrar, may, by writing under his hand and seal of office, appoint a deputy who may perform all the duties required to be performed by the officer making the appointment.
Accountant	21.-(1) The Accountant of the Supreme Court is continued as a corporation sole by the name of "The Accountant of the Supreme Court of Ontario", and as such corporation sole "Accountant of the Supreme Court of Ontario".	SECTION 21  Subsection (1) is derived from subsection 110(1) of the Judicature Act. The concluding words of the existing provision have been deleted as unnecessary. Perpetual succession and the ability to sue and be sued are automatic consequences of being a corporation sole.	110.-(1) The Accountant of the Supreme Court is a corporation sole by the name of "The Accountant of the Supreme Court of Ontario", and as such corporation sole has perpetual succession and may sue and be sued and may plead and be impleaded in any of Her Majesty's courts.
Appointment	(2) The Lieutenant Governor in Council may appoint the Accountant of the Supreme Court.	Subsection (2) is a new provision simply stating that the Accountant is appointed by the Lieutenant Governor in Council.	
Money vested in Accountant	(3) Money paid into the Supreme Court shall be paid to the Accountant and such money and securities in which the money is invested are vested in the Accountant.	Subsection (3) is derived from subsections 110(2) and 111(4) of the <u>Judicature Act</u> .	110(2) All money, mortgages, stocks, securities and property now vested in the Accountant, as such corporation sole, shall continue to be so vested in him, and all money in court and all securities in which money paid into court is invested is vested in him as such corporation sole, subject to this Act.  111(4) Money paid into court shall be invested in the name of The Accountant of the Supreme Court of Ontario



DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

Subsections (4) and (5) are derived from existing rule 725, which will not appear in the new Rules of Civil Procedure.

(4) Mortgages and other securities taken under an order of the Supreme Court and instruments taken as security in respect of a proceeding in the Supreme Court shall be taken in the name of the Accountant and shall be deposited in his or her office, except where an order provides otherwise.

(5) Subject to an order of the court, the Accountant has no duty or obligation in respect of the instruments deposited under subsection (4) except as custodian of the instruments.

Rules of Practice:

725.-(1) All mortgages and other securities taken under an order or judgment of the court and all bonds and other instruments required by the practice of the court for the purpose of security, except security for costs, shall, unless otherwise ordered, be taken in the name of the Accountant, and shall be deposited in his office.

(2) Mortgages and other securities made to or vested in the Accountant in any action or matter shall be held by him subject to the order of the court, but no duty or liability, except as custodian of the instrument, shall, by reason of such mortgage or other security being made, given to or vested in him, be imposed on the Accountant in respect of such mortgage or security or any property thereby vested in him.

Judicature Act:

Subsection (6) is derived from section 115 of the Judicature Act.

(6) The Provincial Auditor shall examine and report on the accounts and financial transactions of the Accountant. R.S.O.1980,c.223,s.110.

115. The Provincial Auditor shall examine and report upon the accounts and financial transactions of The Accountant of the Supreme Court of Ontario.

SECTION 22

Subsections (1) and (2) are derived from subsection 111(1) of the Judicature Act.

22.-(1) The finance committee is continued and shall be composed of three persons appointed by the Lieutenant Governor in Council.

(2) The finance committee has control and management of the money in the Supreme Court, the investment of the money and the securities in which it is invested.

111.-(1) The finance committee shall continue to be composed of three persons who shall be appointed by and hold office during the pleasure of the Lieutenant Governor in Council, and, notwithstanding this or any other Act, the finance committee has the control and management of the money in court and the securities in which it is invested and the investment of such money

DRAFT COURTS OF JUSTICE ACT		COMMENTS	EXISTING PROVISIONS
Investment of court funds	(3) Money that is available for investment shall be invested in investments in which the Treasurer of Ontario may invest public money under section 3 of the <u>Financial Administration Act</u> .	Subsection (3) is derived from subsection 111(5) of the <u>Judicature Act</u> .	(5) Any money that is available for investment shall be invested in investments in which the Treasurer of Ontario and Minister of Economics may invest public money under section 3 of the <i>Financial Administration Act</i> .
R.S.O.1980, c.161			
Employment of trust company	(4) The finance committee may employ a trust company to make the investments or act as custodian of the securities purchased as investments.	Subsection (4) is derived from subsection 111(7) of the <u>Judicature Act</u> .	(7) The finance committee may employ a trust company to make the investments of money paid into court or as custodian of the securities representing investments of the money, on such terms and conditions as are agreed
Interest	(5) The finance committee may provide for the payment of interest on money paid into the Supreme Court and may fix the rate of interest so paid.	Subsection (5) is derived from subsection 111(2) of the <u>Judicature Act</u> .	(2) The finance committee may provide for the payment of interest upon any money paid into court and may fix the rate of interest so paid
Reserve funds	(6) The finance committee may establish such reserve funds as it considers necessary.	Subsection (6) is derived from subsection 111(3) of the <u>Judicature Act</u> .	(3) The finance committee may establish such reserve funds as it considers expedient in the management of the money in court.
	R.S.O.1980, c.223, s.111.		
Other Officers	23. In addition to the officers specifically provided for in this Act, the Lieutenant Governor in Council on the recommendation of the Attorney General, may appoint such officers of the Supreme Court as are considered necessary. R.S.O.1980, c.223, s.83(1).	SECTION 23 This section is derived from section 83 of the <u>Judicature Act</u> .	83.—(1) There shall be such officers of the Supreme Court as are considered necessary by the Lieutenant Governor in Council for the due dispatch of the business of the court, and such officers, subject to section 104 as to special examiners, shall be appointed by the Lieutenant Governor in Council  (2) The duties of the officers shall be regulated by the rules and by the terms of any order in council governing such officers.



DRAFT COURTS OF JUSTICE ACT

PART II

DISTRICT COURT OF ONTARIO

Organization

District Court

24.--(1) The county and district courts are amalgamated and continued as a single court of record named the District Court of Ontario. R.S.O.1980,c.100,s.1.

Judge to  
preside

(2) The District Court shall be presided over by a judge of the court. R.S.O.1980,c.100,s.2.

Judges

25.--(1) The District Court shall consist of the Chief Judge of the District Court, who shall be president of the court, the Associate Chief Judge of the District Court, a senior judge for each region established under clause (2)(b) and such number of other judges as is fixed under clause (2)(a). R.S.O.1980,c.101,s.1.

COMMENTS

SECTION 24

Subsection (1) replaces section 2 of the County Courts Act. It reorganizes the county and district courts in each county and district into a single province-wide court called the District Court of Ontario. The reorganization is intended to give the Chief Judge more flexibility in efficiently allocating judicial resources across the province. Federal amendments to the Criminal Code (Canada) will be requested so that the District Court can also assume the jurisdiction exercised by county and district court judges' criminal courts and courts of general sessions of the peace. The reorganization implements a recommendation of the Ontario Law Reform Commission made in its 1973 Report on Administration of Ontario Courts, Part I, p. 162.

Subsection (2) is derived from section 3 of the County Courts Act.

SECTION 25

Subsection (1) replaces sections 1 to 4 and subsection 16(1) of the County Judges Act. In addition to the Chief Judge, the Associate Chief Judge and the other judges, the provision creates a new office of senior judge in each of the District Court regions. There are now eight regions.

EXISTING PROVISIONS

County Courts Act:

2. There shall be in and for every county and district a court of record to be styled, in counties, the "County Court of the (County or Judicial District) of (*naming the county*)" and, in districts, the "District Court of the District of (*naming the district*)".

3. Every county court and district court shall be presided over by a judge in accordance with this Act and the County Judges Act.

County Judges Act:

1. In addition to the judges otherwise provided for in this Act, a Chief Judge of the County and District Courts, herein referred to as the chief judge, and an Associate Chief Judge of the County and District Courts may be appointed, and they shall have all the powers of a judge throughout Ontario. 1977, c. 44, s. 1.

2.--(1) A judge may be appointed for the county court of each of the counties and for the district court of each of the provisional judicial districts. R.S.O. 1970, c. 95, s. 2.

(2) Where another judge is appointed in accordance with section 3 or 4 for a county court or a district court or is designated under section 4 to reside in the jurisdiction of the court, the judge appointed for the court in accordance with subsection (1) shall be known as the senior judge of the court. 1979, c. 66, s. 1.

3.--(1) An additional judge may be appointed for the county court of each of the judicial districts of Niagara North and Niagara South and for the district court of each of the districts of Sudbury and Thunder Bay.

(2) Two additional judges may be appointed for the county court of the Judicial District of Ottawa-Carleton and of the County of Essex.

(3) Three additional judges may be appointed for the county court of each of the counties of Middlesex and Wentworth.

DRAFT COURTS OF JUSTICE ACT		COMMENTS	EXISTING PROVISIONS
Regulations	(2) The Lieutenant Governor in Council may make regulations,  (a) fixing the number of judges of the court who are in addition to the Chief Judge, Associate Chief Judge and senior judges, but where the number is reduced by regulation, the reduction shall not be applied to affect appointments existing at the time of the reduction; and  (b) establishing regions for the purposes of this Part. R.S.O. 1980, c. 161, s. 4(1).	Subsection (2) permits the Lieutenant Governor in Council to make regulations fixing the number of judges of the District Court and establishing District Court regions. Clause (2)(b) is derived from section 15 of the <u>County Judges Act</u> .	(4) Fourteen additional judges may be appointed for the county courts of the Judicial Districts of York and York Region  4.—(1) In addition to the judges mentioned in section 2 and the judges mentioned in section 3, such judges as are considered necessary may be appointed,  (a) for the county or district court of any county or district that the Lieutenant Governor in Council designates; or  (b) for the county and district courts of the counties and districts of Ontario  (2) A judge appointed for the county and district courts of the counties and districts of Ontario shall reside in the county court district or district court district that is designated by the Lieutenant Governor in Council.  14.—(1) The chief judge shall be president of the county and district courts  15. The Lieutenant Governor in Council may order that a county or two or more counties shall form a county court district for the purposes of this Act or that a provisional judicial district or two or more provisional judicial districts shall form a district court district for the purposes of this Act
County or district judges presiding in District Court	(3) A judge of a county or district court may preside as a judge of the District Court and a reference to a judge of a county or district court shall be deemed to be a reference to a judge of the District Court.	Subsection (3) is a transitional provision intended to permit existing judges to preside over the District Court without the necessity of obtaining new appointments.	
Rights and privileges of judges preserved	(4) Nothing in this Part affects the rights or privileges of a judge who was appointed as a judge of a county or district court before this Part comes into force.	Subsection (4) is a transitional provision intended to preserve the rights and privileges of judges appointed before the coming into force of the <u>Courts of Justice Act</u> .	



DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

SECTION 26

Chief Judge  
26.--(1) The Chief Judge of the District Court has general supervision and direction over the sittings of the court and the assignment of the judicial duties of the court. R.S.O.1980,c.101, s.15(4).

Subsection (1) is derived from section 11 of the County Courts Act and subsection 16(4) of the County Judges Act.

County Courts Act:

11. In each year the sittings of each county or district court shall be held at such time or times as is ordered by the chief judge, and the order of the chief judge shall be deemed to be a regulation to which the Regulations Act applies.

County Judges Act:

16 (4) To ensure the dispatch of business of the various courts, including chambers, that are presided over by the judges of the county and district courts, the chief judge shall have general supervisory powers over arranging the sittings of such courts, including chambers.

Idem  
(2) The Associate Chief Judge shall exercise and perform such powers and duties as are assigned by the Chief Judge, and where the Chief Judge is absent from Ontario or is for any reason unable to act, all the powers and duties of the Chief Judge shall be exercised and performed by the Associate Chief Judge or, where both are absent or unable to act, by a judge designated by the Chief Judge.  
New.

Subsection (2) replaces subsection 16(3) of the County Judges Act. The Associate Chief Judge of the District Court is given power to perform duties assigned by the Chief Judge and, where the Chief Judge is absent or unable to act, to act in place of the Chief Judge.

16(3) The chief judge may designate one of the other judges to act in his place for all purposes during his absence from Ontario or illness.

Senior Judges

27.--(1) The senior judge of a region shall, subject to the authority of the Chief Judge, direct and supervise the sittings of the court in the region and the assignment of the judicial duties of the court in the region.

SECTION 27

Subsection (1) states the authority of the senior judges of the regions to supervise sittings and assign judicial duties.

Idem

(2) A judge who, on the coming into force of this Part, was a senior judge of a county or district court under subsection 2(2) of the County Judges Act, being chapter 101 of the Revised Statutes of Ontario, 1980, may, subject to the authority of the Chief Judge and the senior judge of the region, direct and supervise the sittings of the District Court in the county or district and the assignment of the judicial duties of the District Court in the county or district. New.

Subsection (2) is a transitional provision that preserves the authority of senior judges of specific county and district courts to supervise sittings and assign judicial duties in their county or district. This provision replaces section 7 of the County Judges Act.

7. The senior judge of a county or district court may, subject to the authority of the chief judge, regulate and supervise the other judges of the court in the exercise of their authority.

DRAFT COURTS OF JUSTICE ACT		COMMENTS	EXISTING PROVISIONS
Annual meeting in regions	(3) For the purposes of arranging the sittings of the District Court and considering matters relating to the court and the judges, the Chief Judge shall convene a meeting of the senior judge and judges of each region at least once in every year. R.S.O.1980,c.101,s.16(5).	Subsection (3) is derived from subsection 16(5) of the <u>County Judges Act</u> .	16 (5) For the purpose of arranging the sittings of the various courts and considering matters relating to the courts and the judges, the chief judge shall convene a meeting of the judges of each county and district court district at least once in each year and shall preside thereat.
Additional Judges	28.--(1) For each of the offices of Chief Judge of the District Court and Associate Chief Judge of the District Court, there shall be such additional offices of judge of the District Court as are from time to time required to be held by Chief Judges and Associate Chief Judges who have elected under the <u>Judges Act</u> (Canada) to perform only the duties of a judge of the court. <u>New</u> .	SECTION 28  Subsection (1) is a new provision intended to implement, in Ontario, provisions of the <u>Judges Act</u> (Canada) that permit a Chief Judge or Associate Chief Judge, after ten years in office, to elect to serve only as a judge.	
R.S.C.1970, c.J-1		Subsection (2) is derived from subsection 5(1) of the <u>County Judges Act</u> . The wording has been changed slightly to conform with the language of section 20.2 of the <u>Judges Act</u> (Canada).	5.--(1) For each office of judge of the county and district courts of the counties and districts of Ontario there shall be the additional office of supernumerary judge held by a judge of such court who has elected under the <u>Judges Act</u> (Canada) to hold office only as a supernumerary judge of that court.
Supernumerary judges	(2) For each office of judge of the District Court, there shall be the additional office of supernumerary judge held by a judge of the court who has elected under the <u>Judges Act</u> (Canada) to hold office only as a supernumerary judge of the court. R.S.O.1980,c.101,s.5(1).		
Rank and precedence	29. The judges of the District Court have rank and precedence as follows:  1. The Chief Judge of the District Court. 2. The Associate Chief Judge of the District Court. 3. The senior judges of regions, according to seniority of appointment. 4. The other judges of the District Court, according to seniority of appointment. R.S.O.1980,c.101,s.6.	SECTION 29  This provision is derived from section 6 of the <u>County Judges Act</u> . The senior judges of the District Court regions are given rank and precedence over the other judges because of the very significant administrative responsibilities given to the senior judges of the regions.	6. The chief judge has rank and precedence over all other judges and, after the associate chief judge, the judges and supernumerary judges have rank and precedence among themselves according to seniority of appointment.



DRAFT COURTS OF JUSTICE ACT

Annual meeting

30.-(1) A meeting of the judges of the District Court shall be held in Toronto at least once in every year, on a day fixed by the Chief Judge of the District Court, for the purpose of considering this Act, the Rules of Civil Procedure and the administration of justice generally. R.S.O.1980, c.101,s.16(8).

Recommendations

(2) The judges shall report their recommendations to the Attorney General. New.

Jurisdiction

Jurisdiction

31.-(1) The District Court has jurisdiction to hear and determine any action, except,

- (a) where the sum claimed or the value of the property that is the subject of the action exceeds \$15,000; or
- (b) where the court to hear and determine the action is specified by statute.

COMMENTS

SECTION 30

This provision is derived from subsection 16(8) of the County Judges Act.

SECTION 31

Subsection (1) deals with the "action" jurisdiction of the District Court. It replaces subsection 14(1) of the County Courts Act. The existing provision contains a long list of specific subjects over which county and district courts have jurisdiction. The jurisdiction of the courts is so broad that it is much simpler to state that they have jurisdiction to hear and determine any action, subject to specific exceptions. Clause (1)(a) states the main exception; the District Court does not have jurisdiction in actions where the sum claimed or the value of the property that is the subject of the action exceeds \$15,000. Clause (1)(b) states the obvious principle that the District Court cannot hear actions that are required by statute to be heard by another court.

The revision of subsection 14(1) of the County Courts Act makes several changes in the court's jurisdiction. First, under the existing Act, the Court of Appeal has ruled that the county and district courts do not have admiralty jurisdiction: Heath v. Kane (1976), 10 O.R.(2d) 716. An opposite conclusion has been reached in British Columbia by the B.C. Court of Appeal: Balfour Guthrie (Canada) Ltd. v. Far Eastern Steamship Co. (1978), 5 B.C.L.R. 60. To clarify this issue, the new Act states that the District Court can hear any action and does not exclude admiralty actions. The Supreme Court also has jurisdiction over admiralty actions: Shipman v. Phinn (1914), 31 O.L.R. 113; aff'd (1914), 20 D.L.R. 596 (C.A.). By giving the District Court jurisdiction in admiralty actions for less than \$15,000, it will not be necessary for persons involved in minor boating accidents to bring their actions in the Supreme Court.

In other changes, the District Court will no longer be prevented from hearing actions for libel (see clause 14(1)(b) of the County Courts Act), partnership actions (see clause 14(1)(g) of the County Courts Act) or actions by legatees under a will for the recovery of money or property less than \$15,000 in value where the estate of the testator exceeds \$200,000 (see clause 14(1)(h) of the County Courts Act).

EXISTING PROVISIONS

16 (8) For the purpose of considering any matter relating to the administration of justice in the county and district courts and other courts presided over by the county and district court judges, the chief judge shall assemble at Toronto once in every year all the judges of the county and district courts and he shall preside over such meeting.

County Courts Act:

14. — (1) The county and district courts have jurisdiction in,

- (a) actions arising out of contract, expressed or implied, where the sum claimed does not exceed \$15,000;
- (b) personal actions, except actions for libel, where the sum claimed does not exceed \$15,000;
- (c) actions for trespass or injury to land where the sum claimed does not exceed \$15,000, unless the title to the land is in question, and in that case also where the value of the land does not exceed \$15,000 and the sum claimed does not exceed that amount;
- (d) actions for the obstruction of or interference with a right-of-way or other easement where the sum claimed does not exceed \$15,000, unless the title to the right or easement is in question, and in that case also where the value of the land which the right or easement is claimed does not exceed that amount;
- (e) actions for the recovery of property, real or personal, including actions of replevin and actions of detinue where the value of the property does not exceed \$15,000;

DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

- (f) actions for the enforcement by foreclosure or sale or for the redemption of mortgages, charges or liens, with or without a claim for delivery of possession or payment or both, where the sum claimed to be due does not exceed \$15,000;
- (g) partnership actions where the joint stock or capital of the partnership does not exceed in amount or value \$100,000;
- (h) actions by legatees under a will for the recovery or delivery of money or property bequeathed to them where the legacy does not exceed in value or amount \$15,000, and the estate of the testator does not exceed in value \$200,000;
- (i) in all other actions for equitable relief where the subject-matter involved does not exceed in value or amount \$15,000; and
- (j) actions and contestations for the determination of the right of creditors to rank upon insolvent estates where the claim of the creditor does not exceed \$15,000.

Idem

(2) The District Court does not have jurisdiction to grant prerogative remedies. R.S.O.1980,c.100,s.14(1).

Subsection (2) is intended to clarify that the District Court cannot grant prerogative remedies. Strictly speaking, the provision is probably not necessary, because prerogative remedies are claimed in "applications" and section 31 deals only with the "action" jurisdiction of the District Court. However, subsection (2) is included to prevent any misunderstanding.



DRAFT COURTS OF JUSTICE ACT

Dispute of  
monetary  
jurisdiction

32.-(1) A defendant who disputes the jurisdiction of the District Court on the ground that a monetary limit mentioned in clause 31(1)(a) has been exceeded shall do so in the statement of defence.

COMMENTS

SECTION 32

This provision provides a mechanism whereby the District Court may assume jurisdiction over monetary claims in excess of \$15,000. It replaces subsections 14(2) to (5) of the County Courts Act. Subsection (1) is derived from subsection 14(2) of the County Courts Act.

EXISTING PROVISIONS

(2) Where a defendant intends to dispute the jurisdiction of the court on the ground that the action, though otherwise within the proper competence of the court, is not within it because of the amount claimed or of the value of the property in question or of the amount or value of the subject-matter involved, or, in the cases mentioned in clauses (1) (g) and (h), because the joint stock or capital of the partnership exceeds in amount or value \$100,000 or the estate of the testator exceeds in value \$200,000, he shall in his appearance or in his statement of defence state that he disputes the jurisdiction of the court and the ground upon which he relies for disputing it, and, in default of his so doing, unless otherwise ordered by the court or a judge, the question of jurisdiction shall not afterwards be raised or the jurisdiction be brought in question, and in any such action tried or disposed of in a county or district court such court has the right to award all costs of or incidental to such action on the scale of the Supreme Court in the same manner as if such action had been tried or disposed of in the Supreme Court.

Transfer or  
abandonment  
of excess by  
plaintiff

(2) Where a defendant disputes the monetary jurisdiction of the District Court in accordance with subsection (1), the plaintiff may, within fifteen days after the filing of the statement of defence,

(a) on requisition to the local registrar of the District Court, require the action to be transferred to the Supreme Court; or

(b) abandon the amount of the claim in excess of the monetary limit by serving and filing a notice abandoning the excess, in which case the plaintiff is not entitled to recover the excess in any other proceeding.

Subsection (2) is derived from subsection 14(3) and section 19 of the County Courts Act.

14(3) Where the notice mentioned in subsection (2) is given, the plaintiff may, within fifteen days after the entry of appearance if the defendant has given the notice in his appearance, or within fifteen days after the filing of the statement of defence if the defendant has given the notice in his statement of defence, on praecipe require all papers and proceedings in the action to be transmitted to the proper office of the Supreme Court in the county or district in which the action was brought, and the action is transferred to the Supreme Court when the papers and documents are so transmitted

19.-(1) Where it appears that the claim of the plaintiff is for an amount beyond the jurisdiction of the court, he may, by writing signed by him and filed, upon such terms as the judge considers proper as to costs and otherwise, abandon the excess, and in such case the plaintiff shall forfeit such excess and is not entitled to recover it in any other action.

(2) A defendant has the like right in respect of his set-off or counterclaim

DRAFT COURTS OF JUSTICE ACT		COMMENTS	EXISTING PROVISIONS
Transfer by defendant	<p>(3) Where the plaintiff does not take one of the steps permitted by subsection (2), the defendant may, within thirty days after the filing of the statement of defence, make a motion to a judge of the Supreme Court for an order transferring the action to the Supreme Court on the ground that the action is beyond the monetary jurisdiction of the District Court.</p>	<p>Subsection (3) is derived from subsection 14(4) of the <u>County Courts Act</u>.</p>	<p>14 (4) Where the plaintiff does not exercise the right conferred by subsection (3) within the period set out therein, the defendant may, within ten days after the expiration of such period, apply to a judge of the Supreme Court for an order transferring the action to that court.</p>
Jurisdiction conclusive	<p>(4) Where,</p> <p>(a) the monetary jurisdiction of the court is not disputed under subsection (1);</p> <p>(b) the plaintiff and the defendant fail to take the steps permitted by subsections (2) and (3); or</p> <p>(c) a motion under subsection (3) is dismissed,</p> <p>the District Court has the monetary jurisdiction to hear and determine the action. R.S.O.1980,c.100, s.14(2-5).</p>	<p>Subsection (4) is derived from subsection 14(5) of the <u>County Courts Act</u>.</p>	<p>(5) If no application is made or praecipe issued under subsection (3) or (4) within the time prescribed therein or if an application made under subsection (4) has been refused, subject to subsection (6) and to section 15, the jurisdiction of the court to try and dispose of the action shall be deemed to be established</p>
Continuation in Supreme Court	<p>(5) An action that is transferred to the Supreme Court under this section shall be titled in the Supreme Court and shall be continued as if it had been commenced in the Supreme Court.</p>	<p>Subsection (5) is derived from section 16 of the <u>County Courts Act</u>.</p>	<p>16. Where an action has been transferred to the Supreme Court or to another county or district court under this Act, it shall be in the same plight and condition as it was in at the time of the transfer, and thereafter may be proceeded with as if it had been commenced in the court into which it has been transferred</p>
Counterclaims, etc.	<p>(6) This section applies with necessary modifications to a counterclaim, crossclaim, third or subsequent party claim or a defence of set off, in which a claim is made in excess of a monetary limit mentioned in clause 31(1)(a). <u>New.</u></p>	<p>Subsection (6) is derived from section 15 of the <u>County Courts Act</u>.</p>	<p>15.—(1) Where the defendant pleads a set-off or counterclaim, either party, within six days after the plaintiff has delivered his reply to the defence of set-off or his defence to the counterclaim, may apply to a judge of the Supreme Court for an order transferring the action and counterclaim to the Supreme Court on the ground that such set-off or counterclaim involves matter beyond the jurisdiction of the court.</p> <p>(2) The judge, if satisfied that the set-off or counterclaim involves matter that exceeds the jurisdiction of the court, may order the transfer upon such terms as to costs and otherwise as he considers just.</p> <p>(3) If no such application is made within the time limited or if an application so made has been refused, the jurisdiction of the court to hear and determine the whole matter involved in the set-off or counterclaim shall be deemed to be established.</p>



DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

Transfer from  
Supreme Court to  
District Court

33.-(1) An action in the Supreme Court may be transferred to the District Court by the local registrar of the Supreme Court in the county or district where the action was commenced, upon requisition with the consent of all parties filed before the trial commences.

Idem,  
by order

(2) On motion to a judge of the High Court made before the trial commences, an action in the Supreme Court may be transferred to the District Court where the only claim in the action is for money and it appears that the amount of a judgment in the action will be within the monetary jurisdiction of the District Court.

Conduct of  
transferred  
proceeding

(3) Where an action is transferred to the District Court under this section,

- (a) the court has the monetary jurisdiction to hear and determine the action; and
- (b) the action shall be titled in the District Court and shall be continued as if it had been commenced in that court.

New.

Powers of  
Court

34.-(1) With respect to any matter within its jurisdiction, the District Court has the same powers as the Supreme Court to conduct its proceedings, grant remedies and enforce its orders and other process. R.S.O.1980,c.100,ss.20,26.

SECTION 33

This is a new provision designed to permit actions commenced in the Supreme Court to be transferred to the District Court. Subsection (1) permits an action to be transferred on requisition with the consent of all parties. Subsection (2) provides for an order of the Supreme Court transferring an action to the District Court where the only claim is for money and it appears that the amount of the judgment in the action will be within the monetary jurisdiction of the District Court.

SECTION 34

Subsection (1) is derived from sections 20 and 26 of the County Courts Act.

20. The court has, as regards all causes of action within its jurisdiction, power to grant and shall grant such relief, redress or remedy, or combination of remedies, either absolute or conditional, including the power to grant vesting orders and to relieve against penalties and forfeitures, but does not have power to remove a trustee or to appoint a new trustee under the *Trustee Act*, and shall give such and the like effect to every ground of defence or counterclaim, equitable or legal, by the same mode of procedure and in as full and ample a manner as might and ought to be done in the like case by the Supreme Court.

26. Every county and district court has the like power as is possessed by the Supreme Court of enforcing its judgments and orders in any part of Ontario, and may issue the like writs and process as may be issued out of the Supreme Court and they have the like force and effect as writs and process issued out of the Supreme Court.

DRAFT COURTS OF JUSTICE ACT		COMMENTS	EXISTING PROVISIONS
Contempt of court	(2) The District Court may punish by fine or imprisonment, or by both, a wilful contempt of or resistance to its process, rules or orders, but the fine shall not in any case exceed \$10,000 nor shall the imprisonment exceed six months. R.S.O.1980, c.100, s.27.	Subsection (2) is derived from section 27 of the County Courts Act. The \$100 maximum fine in the existing Act has been increased to \$10,000. This is the first increase in over 125 years.	27. Every county and district court may punish by fine or imprisonment, or by both, any wilful contempt of or resistance to its process, rules or orders, but the fine shall not in any case exceed \$100 nor shall the imprisonment exceed six months
Appeal from final orders	35.-(1) An appeal from a final order of a District Court judge lies to the Court of Appeal. R.S.O.1980, c.100, ss.31,34.	SECTION 35 Subsection (1) is derived from sections 31 and 34 of the County Courts Act.	31. Any party to a cause or matter may appeal to the Court of Appeal from any judgment directed to be entered at or after the trial or from a refusal to enter a judgment 34.-(1) An appeal lies to the Court of Appeal at the instance of any party to a cause or matter from, (a) every decision or order of a judge in court or chambers under any of the powers conferred upon him by the rules of court or by a statute, unless provision is made therein to the contrary; (b) every decision or order in a cause or matter disposing of any right or claim; (c) any decision or order of a judge, whether pronounced or made at the trial, or on appeal from taxation or otherwise, that has the effect of depriving the plaintiff of county court costs on the ground that his action is of the proper competence of the small claims court, or of entitling him to county court costs on the ground that the action is not of the proper competence of the small claims court.
Appeal from interlocutory orders	(2) An appeal from an interlocutory order of a District Court judge lies to the High Court. R.S.O.1980, c.100, s.40.	Subsection (2) is derived from section 40 of the County Courts Act.	40. In the case of any decision or order made in an action by a county or district court judge in respect of which an appeal is not provided in section 34, an appeal lies to a judge of the Supreme Court, and the practice and procedure governing appeals from the Master of the Supreme Court apply to every such appeal
Appeal from assessment of costs	(3) An appeal from a certificate of assessment of costs issued in a proceeding in the District Court, where the appeal is on an issue in respect of which an objection was served under the Rules of Civil Procedure, lies to a judge of the court. New.	Subsection (3) clarifies an issue that does not appear to be dealt with under the existing statute law. An appeal from an assessment of costs in a District Court proceeding may be taken to a judge of the District Court.	



DRAFT COURTS OF JUSTICE ACT	COMMENTS	EXISTING PROVISIONS
<p data-bbox="348 1893 371 2000">Officers</p> <p data-bbox="394 1607 505 2530">Local registrars 36.--(1) The Lieutenant Governor in Council may appoint a local registrar of the District Court for each county and district. R.S.O.1980,c.100,s.4(1).</p> <p data-bbox="527 1607 732 2530">Deputy local registrar (2) With the approval of the Attorney General, every local registrar of the District Court may appoint a deputy local registrar who may exercise and perform all the powers and duties of the local registrar. R.S.O.1980,c.100,s.4(1).</p>	<p data-bbox="348 1434 371 1567">SECTION 36</p> <p data-bbox="394 797 444 1567">Subsection (1) is derived from subsection 4(1) of the <u>County Courts Act</u>.</p> <p data-bbox="548 856 595 1567">Subsection (2) is derived from section 85 of the <u>Judicature Act</u>.</p>	<p data-bbox="335 84 468 738">4.--(1) The Lieutenant Governor in Council may appoint a clerk for each county court, and may appoint such persons to the staff of the clerk's office as he considers necessary and may fix their position specifications, salary ranges, and terms and conditions of employment.</p> <p data-bbox="513 458 541 710"><u>Judicature Act:</u></p> <p data-bbox="569 84 732 738">85. With the approval of the Lieutenant Governor in Council, every local officer of the Supreme Court, county court clerk, and surrogate registrar, may, by writing under his hand and seal of office, appoint a deputy who may perform all the duties required to be performed by the officer making the appointment.</p>

DRAFT COURTS OF JUSTICE ACT

PART III

UNIFIED FAMILY COURT

Unified Family Court

37. The Unified Family Court is continued as a court of record in and for the Judicial District of Hamilton-Wentworth. R.S.O.1980, c.515, s.2.

Jurisdiction of judges

38.--(1) The Unified Family Court shall be presided over by a judge of the District Court who is a local judge of the Supreme Court and who is authorized under subsection (2) to exercise the jurisdiction of a judge of the Provincial Court (Family Division). R.S.O.1980, c.515, s.3(1,6).

Authority for family court matters

(2) The Lieutenant Governor in Council may authorize a judge of the District Court who is a local judge of the Supreme Court to exercise the jurisdiction of a judge of the Provincial Court (Family Division). R.S.O.1980, c.515, s.3(2,6).

Jurisdiction of local judge of Supreme Court

(3) All the jurisdiction of the Supreme Court or a judge thereof under the statutory provisions set out in the Schedule to this Part, other than by way of appeal, may be exercised by a local judge of the Supreme Court who is a judge who may preside over the Unified Family Court. R.S.O.1980, c.515, s.3(3); 1982, c.21, s.1.

Exercise of existing jurisdiction

(4) A judge who may preside over the Unified Family Court shall exercise his or her jurisdiction as a local judge of the Supreme Court, a judge of the District Court, or a judge of the Provincial Court (Family Division) in the matters in which the Supreme Court, the District Court, or the Provincial Court (Family Division) or a judge thereof has jurisdiction under the statutory provisions set out in the Schedule to this Part. R.S.O.1980, c.515, s.3(4,6).

COMMENTS

SECTION 37

This section is derived from section 2 of the Unified Family Court Act.

SECTION 38

This section is derived from subsections 3(1) to (4) of the Unified Family Court Act.

EXISTING PROVISIONS

Unified Family Court Act:

2. There shall be a court of record in and for the Judicial District of Hamilton-Wentworth called the "Unified Family Court".

3.--(1) The Unified Family Court shall be presided over by a judge of a county court who is a local judge of the Supreme Court and who is authorized under subsection (2) to exercise the jurisdiction of a judge of a provincial court (family division).

(2) The Lieutenant Governor in Council may authorize a judge of a county court who is a local judge of the Supreme Court to exercise the jurisdiction of a judge of a provincial court (family division).

(3) All the jurisdiction of the Supreme Court or a judge thereof under the statutory provisions set out in the Schedule, other than by way of appeal, may be exercised by a local judge of the Supreme Court who is a Judge who may preside over the Unified Family Court.

(4) A Judge shall exercise his jurisdiction as a judge of the Supreme Court, a judge of a county court, a judge of a provincial court (family division) in the matters in which the Supreme Court, a county court, a provincial court (family division) or a judge thereof has jurisdiction set out in the Schedule.



DRAFT COURTS OF JUSTICE ACT		COMMENTS	EXISTING PROVISIONS
Proceedings in Unified Family Court	39.-(1) Proceedings taken in a court in the Judicial District of Hamilton-Wentworth under the statutory provisions set out in the Schedule to this Part, other than by way of appeal, shall be commenced and titled in the Unified Family Court and the jurisdiction of the court shall be exercised in the Unified Family Court.	SECTION 39 <u>Subsection (1) is derived from subsection 4(1) of the Unified Family Court Act.</u>	4.-(1) Proceedings taken in a court or before a judge in the judicial district in the matters set out in the Schedule, other than by way of appeal, shall be commenced and styled in the Unified Family Court and the jurisdiction of the court or judge shall be exercised in the Unified Family Court.
<u>Parents patriae powers</u>	(2) The court has and may exercise the same <i>parents patriae</i> powers as the Supreme Court in respect of any matter before it. R.S.O.1980,c.515,s.4(1-3).	<u>Subsection (2) is derived from subsection 4(3) of the Unified Family Court Act.</u>	(3) The Court has and may exercise the same <i>parents patriae</i> powers as the Supreme Court in respect of any matter before it.
No jury	(3) All proceedings commenced in or transferred to the Unified Family Court shall be heard and determined without a jury. R.S.O.1980,c.515,s.7.	<u>Subsection (3) is derived from subsection 7(2) of the Unified Family Court Act.</u>	7(2) All proceedings commenced in or transferred to the Court shall be heard and determined without a jury.
Consent to jurisdiction	40. Where a proceeding is commenced in the Unified Family Court in a matter over which jurisdiction may be exercised in the Unified Family Court and is combined with a related matter in the jurisdiction of the Judge but respecting which jurisdiction may not be exercised in the Unified Family Court, the court may, with leave of the Judge and the consent of the parties, hear and determine the combined matters. R.S.O.1980,c.515,s.5.	SECTION 40 <u>This section is derived from section 5 of the Unified Family Court Act.</u>	5. Where a proceeding is commenced in the Unified Family Court in a matter over which jurisdiction may be exercised in the Unified Family Court and is combined with a related matter in the jurisdiction of the Judge but respecting which jurisdiction may not be exercised in the Unified Family Court, the Court may, by leave of the Judge and with the consent of the parties, determine and dispose of the combined matters.
Orders of predecessor court R.S.O.1980, c.152	41.-(1) The Unified Family Court may hear and determine an application under the <u>Family Law Reform Act</u> to discharge, vary or suspend an order made by the Provincial Court (Family Division) of the Judicial District of Hamilton-Wentworth. R.S.O.1980,c.515,s.6(1).	SECTION 41 <u>Subsection (1) is derived from section 6 of the Unified Family Court Act.</u>	6.-(1) The jurisdiction of the Court under Parts I to IV of the <i>Family Law Reform Act</i> to rehear applications applies notwithstanding that the original order was made by a judge of the Provincial Court (Family Division) of the Judicial District of Hamilton-Wentworth.

DRAFT COURTS OF JUSTICE ACT		COMMENTS	EXISTING PROVISIONS
Enforcement	(2) The Unified Family Court may enforce orders made by the Provincial Court (Family Division) of the Judicial District of Hamilton-Wentworth.	Subsection (2) is derived from subsection 23(3) of the <u>Unified Family Court Act</u> .	23(3) The Court may enforce orders made by the Provincial Court (Family Division) of the Judicial District of Hamilton-Wentworth in place of that court.
Powers	42.-(1) In all proceedings in which jurisdiction may be exercised in the Unified Family Court, the court has the same powers as the Supreme Court to conduct its proceedings, grant remedies and enforce its orders and other process. R.S.O.1980,c.515, s.8(1).	SECTION 42 Subsection (1) is derived from subsection 8(1) of the <u>Unified Family Court Act</u> .	8.-(1) In all proceedings in which jurisdiction may be exercised in the Court, the Court has the same powers and duties as the Supreme Court to conduct its proceedings, grant remedies and enforce its judgments, orders and other process
Contempt	(2) The Unified Family Court may punish by fine or imprisonment, or by both, any wilful contempt of or resistance to its process, rules or orders, or to an order of the Supreme Court or the County Court of the Judicial District of Hamilton-Wentworth made before the 1st day of July, 1977 in a matter that is in the jurisdiction of the Unified Family Court, but the fine shall not in any case exceed \$10,000 nor shall the imprisonment exceed six months.	Subsection (2) is derived from subsection 12(1) of the <u>Unified Family Court Act</u> . The maximum fine that may be imposed for contempt has been increased to \$10,000. This corresponds to a similar change made for the District Court in subsection 34(2) of the <u>Courts of Justice Act</u> .	12.-(1) The Court may punish by fine or imprisonment, or by both, any wilful contempt of or resistance to its process, rules or orders, or to an order of the Supreme Court or the County Court of the Judicial District of Hamilton-Wentworth made before the 1st day of July, 1977 in a matter that is in the jurisdiction of the Court, but the fine shall not in any case exceed \$1,000 nor shall the imprisonment exceed six months.
Application of R.S.O.1980, c.103,s.4(3)	(3) Subsection 4(3) of the <u>Creditors' Relief Act</u> applies to a garnishment issued by the Unified Family Court. 1982,c.21,s.3(2).	Subsection (3) is derived from subsection 8(3) of the <u>Unified Family Court Act</u> .	8 (3) Section 145 of the <i>Small Claims Courts Act</i> and subsection 4(3) of the <i>Creditors' Relief Act</i> apply to a garnishment issued by the Court.



DRAFT COURTS OF JUSTICE ACT		COMMENTS	EXISTING PROVISIONS
Place where proceedings commenced	<p>43.--(1) Subject to subsection (2), proceedings referred to in section 39 may be commenced in the Unified Family Court where the applicant or the respondent resides in the Judicial District of Hamilton-Wentworth. R.S.O.1980,c.515,s.9(1); 1982,c.21,s.4(1).</p>	SECTION 43 <u>This section is derived from section 9 of the Unified Family Court Act.</u>	<p>9.--(1) Subject to subsection (1a), proceedings under section 4, may be commenced in the Court where the applicant or the respondent resides in the judicial district.</p>
Application under Part III R.S.O.1980, c.68	<p>(2) An application under Part III of the <u>Children's Law Reform Act</u> in respect of a child who ordinarily resides in the Judicial District of Hamilton-Wentworth may be commenced in the Unified Family Court. 1982,c.21,s.4(2).</p>		<p>(1a) An application under Part III of the <i>Children's Law Reform Act</i> in respect of a child who ordinarily resides in the judicial district may be commenced in the Court.</p>
Transfer to other court	<p>(3) A judge who may preside over the Unified Family Court may, upon motion, order that a proceeding commenced in the Unified Family Court be transferred to the appropriate court in a place where there is no Unified Family Court where, in the opinion of the judge, there is a preponderance of convenience for the matter to be dealt with by that court.</p>		<p>(3) A judge of a court having jurisdiction in a matter referred to in section 4 in a county or district other than the judicial district may, upon application, order that the proceeding in the matter be transferred to the Unified Family Court where, in the opinion of the judge, there is a preponderance of convenience for the matter to be dealt with by that Court.</p>
Transfer from other court	<p>(4) A judge of a court having jurisdiction in a matter referred to in section 39 in a county or district other than the Judicial District of Hamilton-Wentworth may, upon motion, order that the proceeding in the matter be transferred to the Unified Family Court where, in the opinion of the judge, there is a preponderance of convenience for the matter to be dealt with by that court.</p>		<p>(2) A Judge may, upon application, order that a proceeding commenced in the Unified Family Court be transferred to the appropriate court in a place where there is no Unified Family Court where, in the opinion of the Judge, there is a preponderance of convenience for the matter to be dealt with by that court.</p>
Directions and costs	<p>(5) A judge making an order under subsection (3) or (4) may give such directions for the transfer as are considered just. R.S.O.1980,c.515,s.9(2-4).</p>		<p>(4) A judge making an order under subsection (2) or (3) may give such directions for the transfer and order such costs as he considers appropriate.</p>

DRAFT COURTS OF JUSTICE ACT		COMMENTS		EXISTING PROVISIONS	
Status of orders	44. Any order of a judge presiding over the Unified Family Court made in the exercise of his or her jurisdiction as a local judge of the Supreme Court or a judge of the District Court is an order of the Supreme Court or the District Court, respectively, for all purposes. R.S.O.1980,c.515, s.14.	SECTION 44 This section is derived from section 14 of the Unified Family Court Act.		14. Any order or judgment of a Judge sitting in the Unified Family Court made in the exercise of his jurisdiction as a local judge of the Supreme Court or a judge of the county court is an order of the Supreme Court or the county court, respectively, for all purposes	
Appeals	45.--(1) Subject to subsection (2), a provision for an appeal from an order or decision made under the statutory provisions set out in the Schedule to this Part applies to the order or decision when made in the exercise of the jurisdiction by a judge presiding over the Unified Family Court. (2) A provision for an appeal to the District Court or a judge thereof from an order or decision made under the statutory provisions set out in the Schedule to this Part shall be deemed to provide for an appeal to a judge of the Supreme Court. R.S.O.1980,c.515,s.15(1,2).	SECTION 45 Subsections (1) and (2) are derived from subsections 15(1) and (2) of the Unified Family Court Act. The concluding words of subsection 15(2) of the existing Act have been deleted as unnecessary in light of section 137 of the Courts of Justice Act.		15.--(1) Subject to subsection (2), any provision for an appeal from an order or decision made under the statutory provisions set out in the Schedule applies to the order or decision when made in the exercise of the jurisdiction by a Judge presiding over the Unified Family Court. (2) Any provision for an appeal to a county court or a judge thereof from an order or decision made under the statutory provisions set out in the Schedule shall be deemed to provide for an appeal to a judge of the Supreme Court in accordance with the rules of that court and, on the appeal, the court may set aside the order and direct any other order to be entered or may direct a new trial and may make such other order as to costs and otherwise as appears just.	
Idem	(3) Where an order made under a statutory provision set out in the Schedule to this Part is within the jurisdiction of the Supreme Court or the District Court outside the Judicial District of Hamilton-Wentworth, the order shall, for the purposes of an appeal, be deemed to have been made by a judge of the High Court. New.	Subsection (3) is a new provision intended to clarify appeal routes when the Unified Family Court makes an order that, outside Hamilton-Wentworth, would have been within the jurisdiction of the Supreme Court or District Court.			
Idem	(4) Where no provision is made for an appeal from an order or decision of a judge presiding over the Unified Family Court, an appeal lies, (a) to the Court of Appeal from a final order or decision; (b) to a judge of the Supreme Court from an interlocutory order or decision. R.S.O. 1980,c.515,s.15(3).	Subsection (4) is derived from subsection 15(3) of the Unified Family Court Act.		(3) Where no provision is made for an appeal from an order or decision of a Judge presiding over the Unified Family Court, an appeal lies, (a) to the Court of Appeal from a final order or decision, (b) to a judge of the Supreme Court from an interlocutory order or decision, in accordance with the rules of the Supreme Court	



DRAFT COURTS OF JUSTICE ACT		COMMENTS	EXISTING PROVISIONS
Criminal Jurisdiction R.S.O.1970, c.C-34	46. A judge presiding over the Unified Family Court has all the powers of a magistrate under the <u>Criminal Code</u> (Canada) for the purposes of proceedings under the <u>Criminal Code</u> (Canada) and the Court, proceedings under the <u>Criminal Code</u> (Canada) and the Unified Family Court,	SECTION 46  This section is derived from section 16 of the <u>Unified Family Court Act</u> .	16. A Judge presiding over the Unified Family Court has all the powers of a magistrate under the <i>Criminal Code</i> (Canada) for the purposes of proceedings under the <i>Criminal Code</i> (Canada) and the Court,  (a) is a juvenile court for the purpose of dealing with juvenile delinquents under the <i>Juvenile Delinquents Act</i> (Canada) and has all the powers vested in a juvenile court under that Act; and  (b) has power to try any child charged with an offence against the laws of Ontario.
Clerk R.S.O.1980, c.418	47. A clerk of the Unified Family Court shall be appointed for the court under the <u>Public Service Act</u> . R.S.O.1980,c.515,s.17.	SECTION 47  This section is derived from section 17 of the <u>Unified Family Court Act</u> .	17. A clerk of the Court and such officers and employees as are considered necessary shall be appointed for the Court under the <i>Public Service Act</i> .
Conciliation service	48. A conciliation service may be established, maintained and operated as part of the Unified Family Court. R.S.O.1980,c.515,s.18.	SECTION 48  This section is derived from section 18 of the <u>Unified Family Court Act</u> .	18. A conciliation service may be established, maintained and operated as part of the Court.
Powers of probation officers	49. Every probation officer appointed for the Unified Family Court has, while acting in the discharge of his or her duties, all the powers of a police constable. R.S.O.1980,c.515,s.19.	SECTION 49  This section is derived from section 19 of the <u>Unified Family Court Act</u> .	19. Every probation officer appointed for the Court has, while acting in the discharge of his duties, all the powers of a police constable.
Regulations	50. The Lieutenant Governor in Council may make regulations,  (a) specifying the returns to be made by the Unified Family Court;  (b) providing for a system of recording and transcribing evidence before the Unified Family Court;  (c) providing for the appointment and employment of court reporters and fixing their fees, expenses and other forms of remuneration;	SECTION 50  This section is derived from section 22 of the <u>Unified Family Court Act</u> .	22. The Lieutenant Governor in Council may make regulations,  (a) specifying the returns to be made by the Court;  (b) providing for the safekeeping, inspection and destruction of books, documents and papers of the Court;  (c) providing for a system of recording and transcribing evidence before the Court,  (d) providing for the appointment and employment of stenographic reporters to record evidence before the Court and fixing their fees, expenses and other forms of remuneration;

DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

- (d) prescribing the functions of and providing for a conciliation service under this Part;
- (e) prescribing the duties of the officers and employees of the Unified Family Court or of any class of such officers or employees;
- (f) providing for a system of statistical records relating to the Unified Family Court. R.S.O.1980,c.515,s.22.

- (e) prescribing the functions of and providing for the management of a detention and observation home and a conciliation service under this Act;
- (f) prescribing the duties of the officers and employees on the staff of the Court or of any class of such officers or employees;
- (g) providing for a system of statistical records relating to the Court;
- (h) requiring the payment of fees in respect of proceedings in the Court and prescribing the amounts thereof

Rules

51.-(1) The Lieutenant Governor in Council may make rules for the Unified Family Court in relation to the practice and procedure of the court and may make rules for the court, even though they alter or continue the substantive law, in relation to,

- (a) conduct of proceedings in the court;
  - (b) joinder of claims and parties, and representation of parties;
  - (c) commencement of proceedings and service of process in or outside Ontario;
  - (d) discovery and other forms of disclosure before hearing, including the scope thereof and the use of such discovery and disclosure in a proceeding;
  - (e) examination of witnesses in or out of court;
  - (f) duties of clerks and other officers;
  - (g) references of proceedings or issues in a proceeding and the powers of a person conducting a reference;
  - (h) costs of proceedings;
  - (i) enforcement of orders and process;
  - (j) any matter that is referred to in an Act as provided for by rules of court,
- and, where an Act contains provisions in respect of practice and procedure, the Lieutenant Governor in Council may make rules supplementing those provisions. R.S.O.1980,c.515,s.21.

SECTION 51

Subsection (1) replaces section 21 of the Unified Family Court Act with a new provision modelled on section 88 of the Courts of Justice Act.

21.-(1) The Lieutenant Governor in Council may make rules regulating any matters relating to the practice and procedure of the Court, including, without limiting the generality of the foregoing,

- (a) regulating the duties of officers of the Court;
- (b) regulating the costs of proceedings in the Court;
- (c) providing for the taxation of costs and prescribing tariffs therefor;
- (d) prescribing the seal of the Court;
- (e) designating referees and providing for references to referees and appeals therefrom;
- (f) prescribing and regulating the proceedings under any Act that confers jurisdiction upon the Court or a judge sitting therein;
- (g) governing the deposit in or payment or transfer into or out of the Court of any money or property or the dealing therewith;
- (h) allowing for service out of Ontario.

(2) Where provisions in respect of practice or procedure are contained in any Act, rules may be made adding to or modifying such provisions to any extent that is considered necessary for the equitable despatch of the business of the Court unless that power is expressly excluded.



DRAFT COURTS OF JUSTICE ACT		COMMENTS	EXISTING PROVISIONS																																																			
Idem	<p>(2) The Rules of Civil Procedure and the rules of the Provincial Court (Family Division) do not apply to proceedings in the Unified Family Court.</p> <p><u>New.</u></p>	<p>Subsection (2) is a new provision intended to clarify that the rules of the Supreme Court, the District Court and the Provincial Court (Family Division) do not apply to the Unified Family Court.</p>																																																				
	<p>SCHEDULE</p> <p>Jurisdiction under the following statutory provisions:</p> <table><tr><th>Statutes</th><th>Provisions</th></tr><tr><td>Annulment of Marriages Act (Ontario) (Canada)</td><td>All</td></tr><tr><td>Child Welfare Act</td><td>Parts II, III and IV</td></tr><tr><td>Children's Law Reform Act</td><td>All, except Sections 60 and 61</td></tr><tr><td>Children's Residential Services Act</td><td>Subs. 18(1) except Cls. (a) and (b)</td></tr><tr><td>Divorce Act (Canada)</td><td>All</td></tr><tr><td>Education Act</td><td>Sections 29 and 30</td></tr><tr><td>Family Law Reform Act</td><td>All, except Part V</td></tr><tr><td>Juvenile Delinquents Act (Canada)</td><td>All</td></tr><tr><td>Marriage Act</td><td>Sections 6 and 9</td></tr><tr><td>Minors' Protection Act</td><td>Section 2</td></tr><tr><td>Reciprocal Enforcement of Maintenance Orders Act, 1982</td><td>All</td></tr><tr><td>Training Schools Act</td><td>Section 8</td></tr></table> <p>R.S.O. 1980, c. 515, Sched. 1, 1982, c. 20, s. 5.</p>	Statutes	Provisions	Annulment of Marriages Act (Ontario) (Canada)	All	Child Welfare Act	Parts II, III and IV	Children's Law Reform Act	All, except Sections 60 and 61	Children's Residential Services Act	Subs. 18(1) except Cls. (a) and (b)	Divorce Act (Canada)	All	Education Act	Sections 29 and 30	Family Law Reform Act	All, except Part V	Juvenile Delinquents Act (Canada)	All	Marriage Act	Sections 6 and 9	Minors' Protection Act	Section 2	Reciprocal Enforcement of Maintenance Orders Act, 1982	All	Training Schools Act	Section 8	<p>SCHEDULE</p> <p>Jurisdiction under the following statutory provisions:</p> <table><tr><th>Statutes</th><th>Provisions</th></tr><tr><td>Annulment of Marriages Act (Ontario) (Canada)</td><td>All</td></tr><tr><td>Child Welfare Act</td><td>Parts II and III</td></tr><tr><td>Children's Law Reform Act</td><td>All, except ss. 60 and 61</td></tr><tr><td>Children's Residential Services Act</td><td>Subs 18 (1) except Clss (a) and (b)</td></tr><tr><td>Divorce Act (Canada)</td><td>All</td></tr><tr><td>Education Act</td><td>Sections 29 and 30</td></tr><tr><td>Family Law Reform Act</td><td>All, except Part V</td></tr><tr><td>Juvenile Delinquents Act (Canada)</td><td>All</td></tr><tr><td>Marriage Act</td><td>Sections 6 and 9</td></tr><tr><td>Minors' Protection Act</td><td>Section 2</td></tr><tr><td>Reciprocal Enforcement of Maintenance Orders Act</td><td>All</td></tr><tr><td>Training Schools Act</td><td>Section 8</td></tr></table>	Statutes	Provisions	Annulment of Marriages Act (Ontario) (Canada)	All	Child Welfare Act	Parts II and III	Children's Law Reform Act	All, except ss. 60 and 61	Children's Residential Services Act	Subs 18 (1) except Clss (a) and (b)	Divorce Act (Canada)	All	Education Act	Sections 29 and 30	Family Law Reform Act	All, except Part V	Juvenile Delinquents Act (Canada)	All	Marriage Act	Sections 6 and 9	Minors' Protection Act	Section 2	Reciprocal Enforcement of Maintenance Orders Act	All	Training Schools Act	Section 8
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DRAFT COURTS OF JUSTICE ACT		EXISTING PROVISIONS	
PART IV PROVINCIAL COURTS Judges		Provincial Courts Act:	
Appointment of Judges	52.--(1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint such provincial judges as are considered necessary. R.S.O.1980,c.398,s.2.	2. The Lieutenant Governor in Council on the recommendation of the Minister may appoint such provincial judges as he considers necessary.	
Qualifications	(2) No person shall be appointed as a provincial judge unless he or she has been a member of the bar of one of the provinces of Canada for at least ten years. <u>Rev.</u>	12.--(1) Subject to subsection (2), unless authorized by the Lieutenant Governor in Council, a judge shall not practise or actively engage in any business, trade or occupation but shall devote his whole time to the performance of his duties as a judge.  (2) A judge, with the previous consent of the Minister, may act as arbitrator, conciliator or member of a police commission	
Other employment	53.--(1) Subject to subsection (2), a provincial judge shall devote his or her whole time to the performance of his or her duties as a judge and shall not practise or actively engage in any business, trade or occupation except as authorized by the Lieutenant Governor in Council.  (2) A provincial judge, with the previous consent of the Attorney General, may act as an arbitrator, conciliator or member of a police commission. R.S.O.1980,c.398,s.12.	5.--(1) Every judge shall retire upon attaining the age of sixty-five years  (2) Notwithstanding subsection (1), a judge appointed as a full-time magistrate after the 1st day of July, 1941 and before the 2nd day of December, 1968 shall retire upon attaining the age of seventy years.	
Idem			
Retirement	54.--(1) Every provincial judge shall retire upon attaining the age of sixty-five years.  (2) Notwithstanding subsection (1), a provincial judge appointed as a full-time magistrate, judge of a juvenile and family court or master after the 1st day of July, 1941 and before the 2nd day of December, 1968 shall retire upon attaining the age of seventy years.		
Idem			

COMMENTS

SECTION 52

Subaection (1) is derived from section 2 of the Provincial Courts Act.

Subsection (2) is new and deals with a recommendation of the Gale Report on the Provincial Courts Act. Recommendation No. 1 of the Report (at p. 72) was that provincial judges should have at least five years membership at the bar of any province of Canada before their appointment. The proposed provision provides for a ten year qualification requirement. This is the same requirement that applies to federally-appointed judges.

SECTION 53

This section is derived from section 12 of the Provincial Courts Act.

SECTION 54

Subsections (1) to (3) are derived from subsections 5(1) to (3) of the Provincial Courts Act.



DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

Idem	(3) Notwithstanding subsection (1), a provincial judge appointed as a full-time magistrate on or before the 1st day of July, 1941 shall retire upon attaining the age of seventy-five years.		(3) Notwithstanding subsection (1), a judge appointed as a full-time magistrate on or before the 1st day of July, 1941, shall retire upon attaining the age of seventy-five years.
Continuation of judges in office	(4) A provincial judge who has attained the age for retirement under subsection (1) may, subject to the annual approval of the Chief Judge, continue in office as a full-time or part-time judge until he or she attains the age of seventy years, and a judge who has attained the age of seventy years may, subject to the annual approval of the Judicial Council, continue in office as a full-time or part-time judge until he or she has attained the age of seventy-five years. R.S.O. 1980, c.398, s.5.	Subsections (4) to (6) replace subsection 5(4) of the existing Act. The new provisions remove the involvement of the executive level of government from the decision whether a provincial judge may continue in office beyond the normal retirement age. The new provisions require the decision to be made by the chief judge or the Judicial Council.	(4) Upon attaining an age for retirement under subsection (1) or (2), a judge may be reappointed to hold office during pleasure but shall not hold office after attaining the age of seventy-five years.
Continuation of associate chief judge and senior judges in office	(5) An associate chief judge or senior judge who is in office upon attaining the age for retirement under subsection (1) may, subject to the annual approval of the chief judge, continue in that office until he or she has attained the age of seventy years and thereafter may, subject to the annual approval of the Judicial Council, continue in that office until he or she has attained the age of seventy-five years.		
Continuation of chief judge in office	(6) A chief judge who is in office upon attaining the age for retirement under subsection (1) or (2) may, subject to the annual approval of the Judicial Council, continue in that office until he or she has attained the age of seventy-five years. He		

DRAFT COURTS OF JUSTICE ACT

Resignation

55. A provincial judge may at any time resign from his or her office in writing, signed by the judge and delivered to the Lieutenant Governor. R.S.O.1980,c.398,s.6.

Removal for cause

56.-(1) A provincial judge may be removed from office before attaining retirement age only if,

- (a) a complaint regarding the judge has been made to the Judicial Council; and
- (b) the removal is recommended by an inquiry held under section 60 on the ground that the judge has become incapacitated or disabled from the due execution of his or her office by reason of,
  - (i) infirmity,
  - (ii) conduct that is incompatible with the execution of his or her office, or
  - (iii) having failed to perform the duties of his or her office.

R.S.O.1980,c.398,s.4(1).

Order for removal

(2) An order removing a provincial judge from office under this section may be made by the Lieutenant Governor on the address of the Legislative Assembly. R.S.O.1980,c.398,s.4(3).

COMMENTS

SECTION 55

This section is derived from section 6 of the Provincial Courts Act. The new provision requires the resignation to be delivered to the Lieutenant Governor instead of the Attorney General. Recommendation No. 11 of the Gale Report (at p. 74) was that a judge's resignation should not be effective until it was delivered and accepted. The reason for this recommendation (discussed at p. 74 of the Gale Report) was to permit a Judicial Council investigation to continue until such time as the resignation had been formally accepted. However, the Judicial Council's purpose is to investigate complaints against judges. Therefore, once a judge has taken the steps necessary to cease being a judge, there is no reason for the Judicial Council to continue its investigation. For this reason, the existing procedure has been retained. Depriving the Judicial Council of jurisdiction once a judge has resigned would not, of course, prevent further investigation by the police if possible criminal conduct was involved.

SECTION 56

Subsection (1) replaces subsection 4(1) of the Provincial Courts Act. Clause (1)(a) implements Recommendation No. 5 of the Gale Report.

Clause (1)(b) deals with Recommendation No. 2 of the Gale Report (p. 73). The provision makes the grounds for removal of provincial judges essentially the same as the grounds for removal of federal judges.

Subsection (2) replaces subsection 4(3) of the Provincial Courts Act. The new provision permits the order removing a provincial judge to be made only on the address of the Legislative Assembly.

EXISTING PROVISIONS

8. A judge may at any time resign his office in writing, signed by him and delivered to the Minister.

4.-(1) A judge may be removed from office before attaining retirement age only for misbehaviour or for inability to perform his duties properly and only if,

- (a) the circumstances respecting the misbehaviour or inability are first inquired into; and
- (b) the judge is given reasonable notice of the time and place for the inquiry and is afforded an opportunity, by himself or his counsel, of being heard and of cross-examining the witnesses and of producing evidence on his own behalf.

(3) An order removing a judge from office under this section may be made by the Lieutenant Governor in Council and the order and the report of the inquiry shall be laid before the Legislative Assembly if it is in session or, if not, within fifteen days after the commencement of the next ensuing session.



DRAFT COURTS OF JUSTICE ACT		COMMENTS	EXISTING PROVISIONS
Judicial Council	57.-(1) The Judicial Council for Provincial Judges is continued and shall be composed of, (a) the Chief Justice of Ontario, who shall preside over the Judicial Council; (b) the Chief Justice of the High Court; (c) the Chief Judge of the District Court; (d) the Chief Judge of the Provincial Court (Criminal Division); (e) the Chief Judge of the Provincial Court (Family Division); (f) the Senior Judge of the Provincial Court (Civil Division); (g) the Senior Master; (h) the Treasurer of The Law Society of Upper Canada; and (i) not more than two other persons appointed by the Lieutenant Governor in Council.	SECTION 57 Subsection (1) is derived from subsection 7(1) of the Provincial Courts Act. The Chief Judge of the District Court, the Senior Judge of the Provincial Court (Civil Division) and the Senior Master have been added as a member of the Judicial Council.	7.-(1) The Judicial Council for Provincial Judges is continued and shall be composed of, (a) the Chief Justice of Ontario, who shall be chairman; (b) the Chief Justice of the High Court; (c) the Chief Judge of the Provincial Courts (Criminal Division); (d) the Chief Judge of the Provincial Courts (Family Division); (e) the Treasurer of the Law Society of Upper Canada; and (f) not more than two other persons appointed by the Lieutenant Governor in Council.
Quorum	(2) A majority of members of the Judicial Council constitutes a quorum and is sufficient for the exercise of all the jurisdiction and powers of the Judicial Council.	Subsection (2) is derived from subsection 7(3) of the Provincial Courts Act.	(3) A majority of members of the Judicial Council constitutes a quorum and is sufficient for the exercise of all the jurisdiction and powers of the Judicial Council.
Staff	(3) Such officers and employees of the Judicial Council as are considered necessary shall be appointed under the Public Service Act. R.S.O. 1980, c.398, s.7.	Subsection (3) is derived from subsection 7(2) of the Provincial Courts Act.	(2) Such officers and employees of the Judicial Council as are considered necessary shall be appointed under the Public Service Act
Expert assistance	(4) The Judicial Council may engage persons, including counsel, to assist it in its investigations. <u>New.</u>	Subsection (4) adopts part of Recommendation No. 12 of the Gale Report (p. 74). The Gale Report also recommended that the legislation provide for a permanent secretary to the Judicial Council. Such a position may be provided for under subsection (3), so there is no need for the Act to make specific mention of a permanent secretary.	8.-(1) The functions of the Judicial Council are, (a) at the request of the Minister, to consider the proposed appointments of provincial judges and make a report thereon to the Minister; (b) to receive complaints respecting the misbehaviour of or neglect of duty by judges or the inability of judges to perform their duties; and
Functions	58.-(1) The functions of the Judicial Council are, (a) at the request of the Attorney General, to consider proposed appointments of provincial judges and make a report thereon to the Attorney General; (b) to receive and investigate complaints respecting provincial judges. R.S.O. 1980, c.398, s.9(1).	SECTION 58 Subsection (1) is derived from clauses 8(1)(a) and (b) of the Provincial Courts Act. Clause (1)(b) permits the Judicial Council to investigate any complaint against a provincial judge. Recommendation No. 6 of the Gale Report (p. 74) was that this section should include the lengthy list of grounds under which a judge may be removed from office. This seems unnecessary. A person should be able to make any complaint he or she likes to the Judicial Council; it is then the function of the Judicial Council to determine if the complaint warrants an investigation (see subsection 59(1) of the Courts of Justice Act).	

DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

Liability  
for damages

(2) No action or other proceeding for damages shall be instituted against the Judicial Council or any member or officer thereof or any person acting under its authority for any act done in good faith in the execution or intended execution of its or his duty. R.S.O.1980,c.398,s.8(6).

Subsection (2) is derived from subsection 8(6) of the Provincial Courts Act.

(6) No action or other proceeding for damages shall be instituted against the Judicial Council or any member or officer thereof or any person acting under its authority for any act done in good faith in the execution or intended execution of its or his duty.

Investigation  
of complaints

59.--(1) Where the Judicial Council receives a complaint against a provincial judge, it shall take such action to investigate the complaint as it considers advisable. R.S.O.1980,c.398,s.8(1)(c).

SECTION 59

Subsection (1) is derived from clause 8(1)(c) of the Provincial Courts Act.

8.--(1) The functions of the Judicial Council are,

(c) to take such action to investigate complaints as it considers advisable including the review thereof with the judge where appropriate, and to make such recommendations to the Minister with respect thereto as it sees fit.

Referral to  
Chief Judges

(2) The Judicial Council may transmit such complaints as it considers appropriate to the Chief Judge of the Provincial Court (Criminal Division), the Chief Judge of the Provincial Court (Family Division), the Senior Judge of the Provincial Court (Civil Division) or the Senior Master, as it considers appropriate. R.S.O.1980,c.398,s.8(2).

Subsection (2) is derived from subsection 8(2) of the Provincial Courts Act.

(2) The chairman may transmit such complaints as he considers appropriate to the Chief Judge of the Provincial Courts (Criminal Division) or the Chief Judge of the Provincial Courts (Family Division)

Proceedings  
not public

(3) The proceedings of the Judicial Council shall not be public, but it may inform the Attorney General respecting matters that it has investigated and the Attorney General may make public the fact that an investigation has been undertaken.

Subsection (3) is derived from subsection 8(4) of the Provincial Courts Act. It implements part of Recommendation No. 7 of the Gale Report (p. 74). It also makes clear that the Attorney General may disclose the fact that an investigation has been undertaken.

(4) The proceedings of the Judicial Council shall not be public, but it may inform and advise the Minister respecting matters that it has investigated or reviewed

Prohibiting  
publication

(4) The Judicial Council may order that information or documents relating to its proceedings not be published or disclosed, except as required by law. New.

Subsection (4) implements the part of Recommendation No. 7 of the Gale Report that is not dealt with in subsection (3). Enforcement of an order not to disclose information is accomplished by section 8 of the Public Inquiries Act.



DRAFT COURTS OF JUSTICE ACT		COMMENTS	EXISTING PROVISIONS
Powers R.S.O.1980, c.411	(5) The Judicial Council has all the powers of a commission under Part II of the <u>Public Inquiries Act</u> , which Part applies to the investigation as if it were an inquiry under that Act. R.S.O.1980, c.398,s.8(5).	Subsection (5) is derived from subsection 8(5) of the Provincial Courts Act. This implements recommendation No. 10 of the Gale Report (p. 74).	(5) The Judicial Council has all the powers of a commission under Part II of the <i>Public Inquiries Act</i> , which Part applies to the investigation as if it were an inquiry under that Act.
Notice of disposition	(6) Where the Judicial Council has dealt with a complaint regarding a provincial judge, it shall inform,  (a) the person who made the complaint; and  (b) where the complaint was brought to the attention of the judge, the judge, of its disposition of the complaint. <u>New.</u>	Subsection (6) implements Recommendation No. 8 of the Gale Report (p. 74).	
Report and recommendations	(7) The Judicial Council may report its opinion regarding the complaint to the Attorney General and may recommend,  (a) that an inquiry be held under section 60;  (b) that the judge be compensated for all or part of the costs incurred by the judge relating to the investigation. R.S.O. 1980,c.398,s.4(1).	Clause (7)(a) implements Recommendation No. 4 of the Gale Report (p. 73). It is intended to make clear that, aside from recommending an inquiry before a Supreme Court judge, the Judicial Council does not have the power to impose sanctions against a judge. The clause is derived from subsection 8(3) of the <u>Provincial Courts Act</u> .  Clause (7)(b) is a modified version of Recommendation No. 13 of the Gale Report (p. 75). The power to order costs has been changed to a power to recommend compensation for costs.	(3) The Judicial Council may recommend to the Lieutenant Governor in Council that an inquiry be held under section 4.
Copy to judge	(8) A copy of a report made under subsection (7) shall be given to the judge.	Subsection (8) implements part of Recommendation No. 9 of the Gale Report (p. 74). The other part is dealt with in subsection (10).	
Right to be heard	(9) The Judicial Council shall not make a report under subsection (7) unless the judge was notified of the investigation and given an opportunity to be heard and to produce evidence on his or her behalf.	The Gale Report did not specifically recommend a legislative provision relating to the rights of a judge during an investigation. The Report suggested a provision, however, if it was felt that one was necessary (see p. 46). The Report's suggested provision included a right to cross-examine all witnesses. If this provision was used, it would require a formal hearing at which every item of information could be subjected to cross-examination by the judge. This would defeat the informal nature of the Judicial Council's proceeding, something that Chief Justice Gale wished to preserve. Therefore, subsection (9) gives the judge a right to be heard before any report is made to the Attorney General, but does not give a right to cross-examine every person who provided information during the course of the investigation.	
Publication of report	(10) Where the Judicial Council makes a report to the Attorney General under subsection (7), the Attorney General may make all or part of the report public, if he or she is of the opinion that it is in the public interest to do so. <u>New.</u>	Subsection (10) implements the second part of Recommendation No. 9 of the Gale Report (p. 74).	

DRAFT COURTS OF JUSTICE ACT

Inquiry

60.--(1) The Lieutenant Governor in Council may appoint a judge of the Supreme Court to inquire into the question whether a provincial judge should be removed from office.

Powers

(2) The Public Inquiries Act applies to an

R.S.O.1980,  
c.411

inquiry under subsection (1). R.S.O.1980,c.398,  
s.4(2).

Report

(3) The report of the inquiry may recommend,

- (a) that the judge be removed from office;
- (b) that the judge be compensated for all or part of the costs incurred by the judge relating to the inquiry. New.

Tabling  
of report

(4) The report of the inquiry shall be laid before the Legislative Assembly if it is in session or, if not, within fifteen days of the commencement of the next ensuing session. R.S.O.1980,c.398,  
s.4(3).

Jurisdiction  
of judges

61.--(1) Every provincial judge has jurisdiction throughout Ontario and,

- (a) shall exercise all the powers and perform all the duties conferred or imposed on a provincial judge by or under any Act of the Legislature or of the Parliament of Canada;
- (b) subject to subsection (2), may exercise all the powers and perform all the duties conferred or imposed on a magistrate, provincial magistrate or one or more justices of the peace under any Act of the Parliament of Canada.  
R.S.O.1980,c.398,s.4(2)

COMMENTS

SECTION 60

Subsections (1) and (2) are derived from subsection 4(2) of the Provincial Courts Act. Since subsection (1) provides that the inquiry will always be held by one judge, it is not necessary to consider Recommendation No. 14 of the Gale Report (p. 75) which suggested that, where more than one judge is appointed, an uneven number should be appointed. The practice has traditionally been to appoint one judge.

Subsection (2) adopts Recommendation No. 16 of the Gale Report (p. 75). The existing Act provides that Part II of the Public Inquiries Act applies to the inquiry. The Gale Report recommended that Part I should also apply. Subsection (2) would also allow Part III to apply if, under subsection 15(1) of the Public Inquiries Act, the Lieutenant Governor in Council so declares. Part III deals with warrants for the apprehension of witnesses and search warrants. Recommendation No. 15 of the Gale Report (p. 75) was that, prior to the commencement of the inquiry, the judge should be provided with a brief statement of the complaint that has been made against him. Subsection (2) makes a specific provision unnecessary to implement this recommendation, since subsection 5(2) of the Public Inquiries Act requires notice of allegations of misconduct to be given. This also makes clause 4(1)(b) of the Provincial Courts Act unnecessary.

Subsection (3) provides, in accordance with the Gale Report (see discussion at p. 67), that the inquiry cannot recommend that a judge be reprimanded; it can only deal with the question of removal from office. Clause (3)(b) is a modified version of Recommendation No. 17 of the Gale Report (p. 75). The power to order costs has been changed to a power to recommend compensation for costs.

Subsection (4) does not adopt Recommendation No. 18 of the Gale Report (p. 75). Since the Public Inquiries Act requires the inquiry to be held in public in most circumstances, the report of the inquiry should be public.

SECTION 61

Subsection (1) is derived from clauses 9(1)(a) and (c) of the Provincial Courts Act.

EXISTING PROVISIONS

4(2) For the purpose of making an inquiry under subsection (1), the Lieutenant Governor in Council may appoint one or more judges of the Supreme Court who shall make the inquiry and report thereon, and a judge so appointed has all the powers of a commission under Part II of the Public Inquiries Act, which Part applies to the inquiry as if it were an inquiry under that Act.

9.--(1) Every judge has jurisdiction throughout Ontario and,

- (a) shall exercise all the powers and perform all the duties conferred or imposed upon a provincial judge by or under any Act of the Legislature or of the Parliament of Canada;
- (c) subject to subsection (2), may exercise all the powers and perform all the duties conferred or imposed upon a magistrate, provincial magistrate or one or more justices of the peace under any Act of the Parliament of Canada;



DRAFT COURTS OF JUSTICE ACT		COMMENTS	EXISTING PROVISIONS
<p>Idem R.S.C.1970, c.C-34</p>	<p>(2) A provincial judge shall not exercise the powers or perform the duties of a magistrate under Part XVI of the <u>Criminal Code</u> (Canada) unless,</p> <p>(a) he or she has been a member of the bar of one of the provinces of Canada; or</p> <p>(b) he or she has acted as a provincial judge for a period of five years,</p> <p>and the judge is so designated by the Lieutenant Governor in Council. R.S.O.1980,c.398,s.9(3).</p>	<p>Subsection (2) is derived from subsection 9(3) of the <u>Provincial Courts Act</u>. Clause 9(3)(c) of the existing Act has been deleted, since a judge who was acting before 1968 will now have acted for more than 5 years and, therefore, will be covered by clause (2)(b) of the new Act.</p>	<p>(3) A judge shall not exercise the powers or perform the duties conferred or imposed upon a magistrate under Part XVI of the <i>Criminal Code</i> (Canada) unless,</p> <p>(a) he is or has been a member of the bar of one of the provinces of Canada;</p> <p>(b) he has acted as a provincial judge for a period of five years; or</p> <p>(c) he was acting as a full-time deputy magistrate, magistrate or judge of the juvenile and family court immediately before the 2nd day of December, 1968,</p> <p>and he is so designated by the Lieutenant Governor in Council.</p>
<p>Idem</p>	<p>(3) Every provincial judge is a justice of the peace and commissioner for taking affidavits. R.S.O.1980,c.398,s.9(1)(d).</p>	<p>Subsection (3) is derived from clause 9(1)(d) of the <u>Provincial Courts Act</u>.</p>	<p>9.—(1) Every judge has jurisdiction throughout Ontario and,</p>
<p>Where procedures not provided</p>	<p>62. Where jurisdiction is conferred on a provincial judge, justice of the peace or provincial court, in the absence of express provision for procedures therefor in any Act, regulation or rule, the judge, justice of the peace or provincial court shall exercise the jurisdiction in any manner consistent with the due administration of justice. R.S.O.1980,c.398,s.9(2).</p>	<p>This provision is the same as subsection 9(2) of the <u>Provincial Courts Act</u>.</p>	<p>(d) is <i>ex officio</i> a justice of the peace and commissioner for taking affidavits.</p> <p>(2) Where jurisdiction is conferred on a judge, justice of the peace or provincial court, in the absence of express provision for procedures therefor in any Act, regulation or rule, the judge, justice of the peace or provincial court shall exercise the jurisdiction in any manner consistent with the due administration of justice.</p>
<p>Chief Judges</p>	<p>63.—(1) The Lieutenant Governor in Council may appoint a provincial judge as Chief Judge of the Provincial Court (Criminal Division) and a provincial judge as Chief Judge of the Provincial Court (Family Division).</p> <p>(2) The Chief Judge of the Provincial Court (Criminal Division) is Chief Judge of the Provincial Offences Court.</p>	<p>SECTION 63 Subsections (1) to (4) are derived from subsections 10(1) to (4) of the <u>Provincial Courts Act</u>.</p>	<p>10.—(1) The Lieutenant Governor in Council may appoint a judge as Chief Judge of the Provincial Courts (Criminal Division) and a judge as Chief Judge of the Provincial Courts (Family Division).</p> <p>(2) The Chief Judge of the Provincial Courts (Criminal Division) is chief judge of the provincial offences courts.</p>

## DRAFT COURTS OF JUSTICE ACT

## COMMENTS

## EXISTING PROVISIONS

## Duties of Chief Judge

(3) Each Chief Judge has general supervision and direction over the sittings of his or her court and the assignment of the judicial duties of the court.

Associate  
Chief Judge

(4) The Lieutenant Governor in Council may appoint a provincial judge as Associate Chief Judge of the Provincial Court (Criminal Division) and a provincial judge as Associate Chief Judge of the Provincial Court (Family Division). R.S.O. 1980, c. 398, s. 10(1-4).

Duties of  
Associate  
Chief Judge

Subsection (5) is a new provision that sets out the duties of associate chief judges.

## Senior Judges

64.-(1) The Lieutenant Governor in Council may designate a provincial judge to be a senior judge of the Provincial Court (Criminal Division), Provincial Court (Family Division), Provincial Court (Civil Division) or the Provincial Offences Court, for such area as is named in the designation. R.S.O. 1980, c. 398, s. 11.

## Duties

Subsection (2) is new and is modelled on the authority of a senior judge of the District Court.

(3) The Lieutenant Governor in Council may appoint a judge as associate chief judge of the provincial courts (criminal division) and a judge as associate chief judge of the provincial courts (family division).

(4) Each Chief Judge shall have general supervision and direction over arranging the sittings of his courts and assigning judges for hearings in his courts, as circumstances require.

**11. The Minister may designate a judge to be senior judge of such provincial courts (criminal division) or provincial courts (family division), or both, as are named in the designation.**

Provincial Court (Civil Division) Act:

5. The Lieutenant Governor in Council, on the recommendation of the Attorney General, shall appoint a judge as senior judge of the Provincial Court who shall have general supervision and direction over arranging the sittings of the Provincial Court, and assigning judges for hearings in the Provincial Court, as circumstances require.



DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

Provincial Courts Act:

Election to revert to office of judge	65. A chief judge, associate chief judge or senior judge who has continued in the office for at least ten years may elect by notice to the Attorney General to cease to perform the duties of that office and to assume the office of a judge only. <u>New.</u>	SECTION 65  This is a new provision that gives chief judges, associate chief judges and senior judges the right, after ten years in that office, to elect to serve only as a provincial judge.
Provincial Court (Criminal Division)	Provincial Court (Criminal Division)  66.-(1) The provincial courts (criminal division) for the counties and districts are amalgamated and continued as a single court of record named the Provincial Court (Criminal Division).  (2) The Provincial Court (Criminal Division) shall be presided over by a provincial judge.  R.S.O.1980,c.398,s.14.	SECTION 66  This section is derived from section 14 of the Provincial Courts Act. It amalgamates the provincial courts (criminal division) throughout the province into a single province-wide court called the Provincial Court (Criminal Division).
Judge to preside		14. There shall be in and for every county and district a court of record to be styled,  (a) in counties, the "Provincial Court (Criminal Division) of the County (or Judicial District or United Counties) of (naming the county, etc.)";  (b) in districts, the "Provincial Court (Criminal Division) of the District of (naming the district)",  presided over by a judge.
Exercise of criminal jurisdiction	67. A provincial judge shall exercise the powers and perform the duties vested in him or her as a magistrate, provincial magistrate or one or more justices of the peace under section 61 sitting in the Provincial Court (Criminal Division).  R.S.O.1980,c.398,s.15.	15. A judge shall exercise the powers and perform the duties vested in him as a magistrate, provincial magistrate or one or more justices of the peace under section 9 sitting in a provincial court (criminal division)
Sittings	68. The Provincial Court (Criminal Division) may sit at any place designated by the Chief Judge of the Provincial Court (Criminal Division).  R.S.O.1980,c.398,s.16.	16. The judges of the provincial court (criminal division) of each county or district may hold sittings at any place in the county or district designated by the Chief Judge of the Provincial Courts (Criminal Division)

DRAFT COURTS OF JUSTICE ACT		COMMENTS	EXISTING PROVISIONS
Rules Committee	69.--(1) The rules committee of the provincial courts (criminal division) is continued as the Rules Committee of the Provincial Court (Criminal Division) and shall be composed of such members as are appointed by the Lieutenant Governor in Council who shall designate one of the members to preside over the Committee.	SECTION 69  This section is derived from section 17 of the <u>Provincial Courts Act</u> .	17.--(1) The rules committee of the provincial courts (criminal division) is continued and shall be composed of such members as are appointed by the Lieutenant Governor in Council who shall designate one of the members as chairman.  (2) A majority of the members of the rules committee constitutes a quorum.  (3) The rules committee of the provincial courts (criminal division) is a provincial court (criminal division) for the purpose of making rules of court under the <i>Criminal Code</i> (Canada).
Quorum	(2) A majority of the members of the Rules Committee constitutes a quorum.		
Rules under R.S.C.1970, c.C-34	(3) The Rules Committee of the Provincial Court (Criminal Division) is the Provincial Court (Criminal Division) for the purpose of making rules of court under the <u>Criminal Code</u> (Canada).  R.S.O.1980,c.398,s.17.		
Provincial Offences Courts	Provincial Offences Court  70.--(1) The provincial offences courts for the counties and districts are amalgamated and continued as a single court of record named the Provincial Offences Court.	SECTION 70  This section is derived from subsection 18(1) of the <u>Provincial Courts Act</u> . It amalgamates the provincial offences courts into a single province-wide court called the <u>Provincial Offences Court</u> .	18.--(1) There shall be in every county and district a court of record to be styled,  (a) in counties, the "Provincial Offences Court of the County (or Judicial District or United Counties) of (naming the county, etc.)";  (b) in districts, the "Provincial Offences Court of the District of (naming the district)".
Judge or justice of the peace to preside	(2) The Provincial Offences Court shall be presided over by a provincial judge or justice of the peace. R.S.O.1980,c.398,s.18(1).		presided over by a judge or justice of the peace.
Jurisdiction	71. The Provincial Offences Court shall perform any function assigned to it by or under the <u>Provincial Offences Act</u> or any other Act.  R.S.O.1980,c.398,s.18(2).	SECTION 71  This section is derived from subsection 18(2) of the <u>Provincial Courts Act</u> . The new provision does not purport to confer jurisdiction; it simply clarifies that the court performs functions under other statutes that do confer jurisdiction.	(2) Each provincial offences court has jurisdiction to hear, determine and dispose of,  (a) all matters in which jurisdiction is conferred by the <i>Provincial Offences Act</i> , and  (b) any other matter assigned to it by or under any statute



DRAFT COURTS OF JUSTICE ACT		EXISTING PROVISIONS	
Sittings	72.-(1) The Provincial Offences Court may hold sittings at any place designated by the Chief Judge of the Provincial Offences Court. (2) Where a proceeding in which the Provincial Offences Court has jurisdiction is conducted during the course of a sitting of the Provincial Court (Criminal Division) or Provincial Court (Family Division), the proceeding shall be deemed to be conducted in the Provincial Offences Court. R.S.O.1980,c.398,s.19.	19-(1) The provincial offences courts may hold sittings at any place in the county or district designated by the chief judge of the provincial offences courts (2) Where a proceeding in which a provincial offences court has jurisdiction is conducted during the course of a sitting of the provincial court (criminal division) or provincial court (family division) in the same county or district, the proceeding shall be deemed to be conducted in the provincial offences court.	
Idem			
Contempt	73.-(1) Except as otherwise provided by statute, every person who commits contempt in the face of the Provincial Offences Court is on conviction liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than thirty days, or to both. (2) Before proceedings are taken for contempt under subsection (1), the court shall inform the offender of the conduct complained of and the nature of the contempt and inform him of his right to show cause why he should not be punished. (3) A punishment for contempt in the face of the court shall not be imposed without giving the offender an opportunity to show cause why he should not be punished. (4) Except where, in the opinion of the court, it is necessary to deal with the contempt immediately for the preservation of order and control in the courtroom, the court shall adjourn the contempt proceeding to another day.	20.-(1) Except as otherwise provided by statute, every person who commits contempt in the face of a provincial offences court is upon conviction liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than thirty days, or to both. (2) Before proceedings are taken for contempt under subsection (1), the court shall inform the offender of the conduct complained of and the nature of the contempt and inform him of his right to show cause why he should not be punished (3) A punishment for contempt in the face of the court shall not be imposed without giving the offender an opportunity to show cause why he should not be punished (4) Except where, in the opinion of the court, it is necessary to deal with the contempt immediately for the preservation of order and control in the courtroom, the court shall adjourn the contempt proceeding to another day.	
Statement to offender			
Show cause			
Adjournment for adjudication			

COMMENTS

SECTION 72

This section is derived from section 19 of the Provincial Courts Act.

SECTION 73

This section is derived from section 20 of the Provincial Courts Act.

DRAFT COURTS OF JUSTICE ACT		COMMENTS	EXISTING PROVISIONS
Adjudication by Judge	(5) Where a contempt proceeding is adjourned to another day under subsection (4), the contempt proceeding shall be heard and determined by the court presided over by a provincial judge.		(5) Where a contempt proceeding is adjourned to another day under subsection (1), the contempt proceeding shall be heard and determined by the court presided over by a judge.
Arrest for immediate adjudication	(6) Where the court proceeds to deal with a contempt immediately and without adjournment under subsection (4), the court may order the offender arrested and detained in the courtroom for the purpose of the hearing and determination.		(6) Where the court proceeds to deal with a contempt immediately and without adjournment under subsection (4), the court may order the offender arrested and detained in the courtroom for the purpose of the hearing and determination.
Barring agent in contempt	(7) Where the offender is appearing before the court as an agent who is not a barrister and solicitor entitled to practise in Ontario, the court may order that he be barred from acting as agent in the proceeding in addition to any other punishment to which he is liable.		(7) Where the offender is appearing before the court as an agent who is not a barrister and solicitor entitled to practise in Ontario, the court may order that he be barred from acting as agent in the proceeding in addition to any other punishment to which he is liable.
Appeals	(8) An order of punishment for contempt under this section is appealable in the same manner as if it were a conviction in proceedings commenced by certificate under Part I of the <u>Provincial Offences Act</u> .		(8) An order of punishment for contempt under this section is appealable in the same manner as if it were a conviction in proceedings commenced by certificate under Part I of the <i>Provincial Offences Act</i> .
R.S.O.1980, c.40U	(9) The <u>Provincial Offences Act</u> applies for the purpose of enforcing a punishment by way of a fine or imprisonment under this section.		(9) The <i>Provincial Offences Act</i> applies for the purpose of enforcing a punishment by way of a fine or imprisonment under this section.
Enforcement			
Penalty for disturbance outside courtroom	74. Any person who knowingly disturbs or interferes with the proceedings of the Provincial Offences Court, without reasonable justification, while outside the courtroom is guilty of an offence and upon conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than thirty days, or to both.		21. Any person who knowingly disturbs or interferes with the proceedings of a provincial offences court, without reasonable justification, while outside the courtroom is guilty of an offence and upon conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than thirty days, or to both.

SECTION 74

This section is derived from section 21 of the Provincial Courts Act.



DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

Rules	<p>75. Subject to the approval of the Lieutenant Governor in Council, the Rules Committee of the Provincial Court (Criminal Division) may make rules,</p> <p>(a) regulating any matters relating to the practice and procedure of the Provincial Offences Court;</p> <p>(b) prescribing forms respecting proceedings in the court;</p> <p>(c) regulating the duties of the clerks and employees of the court;</p> <p>(d) prescribing and regulating the procedures under any Act that confers jurisdiction on the Provincial Offences Court or a judge or justice of the peace sitting therein;</p> <p>(e) prescribing any matter that is referred to in an Act as provided for by the rules of the Provincial Offences Court. R.S.O. 1980, c. 398, s. 22.</p>	<p>SECTION 75</p> <p>This section is derived from section 22 of the <u>Provincial Courts Act</u>.</p>	<p>22. Subject to the approval of the Lieutenant Governor in Council, the rules committee of the provincial courts (criminal division) may make rules regulating any matters relating to the practice and procedure of the provincial offences courts including, without limiting the generality of the foregoing,</p> <p>(a) prescribing forms respecting proceedings in the court;</p> <p>(b) prescribing any matter required to be or referred to as prescribed by the rules of the court;</p> <p>(c) prescribing and regulating the proceedings under any Act that confers jurisdiction upon a provincial offences court or a judge or justice of the peace sitting therein.</p>
Provincial Court (Family Division)	<p>Provincial Court (Family Division)</p> <p>76.-(1) The provincial courts (family division) for the counties and districts are amalgamated and continued as a single court of record named the Provincial Court (Family Division).</p>	<p>SECTION 76</p> <p>This section is derived from subsection 23(1) of the <u>Provincial Courts Act</u>. It amalgamates the provincial courts (family division) into a single province-wide court called the Provincial Court (Family Division).</p>	<p>28.-(1) There shall be in and for every county and district, except the Judicial District of Hamilton-Wentworth, a court of record to be styled,</p> <p>(a) in counties, the "Provincial Court (Family Division) of the County (or Judicial District or United Counties) of (naming the county, etc.);";</p> <p>(b) in districts, the "Provincial Court (Family Division) of the District of (naming the district)",</p> <p>presided over by a judge.</p>
Judge to preside	<p>(2) The Provincial Court (Family Division) shall be presided over by a provincial judge. R.S.O. 1980, c. 398, s. 23(1).</p>	<p>SECTION 77</p> <p>This section is derived from subsection 23(2) of the <u>Provincial Courts Act</u>. Clause (a) has been simplified, since the <u>Juvenile Delinquents Act</u> (Canada) has been proclaimed in force throughout Ontario. Clause (c) has also been simplified. It does not purport to confer jurisdiction; it simply clarifies that the court performs functions under other statutes that do confer jurisdiction. In addition, the references in clause (c) to "juvenile courts" have been deleted, since provincial statutes no longer refer to "juvenile courts" and the only federal statute to use this term, the <u>Juvenile Delinquents Act</u>, is dealt with in clause (a).</p>	<p>(2) Each provincial court (family division),</p> <p>(a) is a juvenile court for the purpose of dealing with juvenile delinquents so soon as the <u>Juvenile Delinquents Act</u> (Canada) is proclaimed in force in the county or district for which it was established, and such court has all the powers vested in a juvenile court under that Act;</p> <p>(b) has power to try any child charged with an offence against the laws of Ontario; and</p> <p>(c) has power to deal with all cases where jurisdiction is conferred by any Act upon a juvenile court or a judge thereof or upon a juvenile and family court or a judge thereof or upon a provincial court (family division).</p>
Jurisdiction	<p>77. The Provincial Court (Family Division),</p> <p>(a) has jurisdiction to deal with juvenile delinquents;</p> <p>(b) has jurisdiction to try any minor charged with an offence against the laws of Ontario; and</p> <p>(c) shall perform any function assigned to it by or under the <u>Family Law Reform Act</u>, the <u>Children's Law Reform Act</u>, the <u>Child Welfare Act</u>, or any other statute. R.S.O. 1980, c. 398, s. 23(2).</p>		

DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

Sittings

78. The Provincial Court (Family Division) may sit at any place designated by the Chief Judge of the Provincial Court (Family Division). R.S.O. 1980, c.398, s.25.

SECTION 78

This section is derived from section 25 of the Provincial Courts Act.

Rules Committee

79.-(1) The rules committee of the provincial courts (family division) is continued as the Rules Committee of the Provincial Court (Family Division) and shall be composed of such members as are appointed by the Lieutenant Governor in Council who shall designate one of the members to preside over the committee.

SECTION 79

This section is derived from subsections 32(1) to (4) of the Provincial Courts Act. Subsection (3) has been expanded to include more specific rule-making authority, based on section 88 of the Courts of Justice Act.

Quorum

(2) A majority of the members of the Rules Committee constitutes a quorum.

Rules

(3) Subject to the approval of the Lieutenant Governor in Council, the Rules Committee of the Provincial Court (Family Division) may make rules in relation to the practice and procedure of the court and may make rules for the court, even though they alter or continue the substantive law, in relation to,

- (a) conduct of proceedings in the court;
- (b) joinder of claims and parties and representation of parties;
- (c) commencement of proceedings and service of process in or outside Ontario;
- (d) discovery and other forms of disclosure before hearing, including the scope thereof and the use of such discovery and disclosure in a proceeding;
- (e) examination of witnesses in or out of court;

25. The judges of the provincial court (family division) of each county or district may hold sittings at any place in the county or district designated by the Chief Judge of the Provincial Courts (Family Division).

82.-(1) The rules committee of the provincial courts (family division) is continued and shall be composed of such members as are appointed by the Lieutenant Governor in Council who shall designate one of the members as chairman.

(2) A majority of the members of the rules committee constitutes a quorum. R.S.O. 1970, c. 369, s. 26 (1, 2).

(3) Subject to the approval of the Lieutenant Governor in Council, the rules committee of the provincial courts (family division) may make rules regulating any matters relating to the practice and procedure of the courts, including, without limiting the generality of the foregoing,

- (a) regulating the duties of officers of the courts;
- (b) regulating the costs of proceedings in the courts;
- (c) providing for the taxation of costs and prescribing tariffs therefor;
- (d) prescribing and regulating the proceedings under any Act that confers jurisdiction upon the courts or a judge sitting therein;
- (e) governing the payment, transfer or deposit into, or in, or out of, any court of any money or property, or to the dealing therewith;
- (f) allowing for service out of Ontario. R.S.O. 1970, c. 369, s. 26 (3); 1977, c. 46, s. 2 (1).
- (4) Where provisions in respect of practice or procedure are contained in any Act, rules may be made adding to or modifying such provisions to any extent that is considered necessary for the equitable despatch of the business of the court unless that power is expressly excluded.



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(f) duties of clerks and other officers;  
(g) costs of proceedings;  
(h) enforcement of orders and process;  
(1) any matter that is referred to in an Act as provided for by rules of court,  
and, where an Act contains provisions in respect of practice and procedure, the Rules Committee of the Provincial Court (Family Division) may make rules supplementing those provisions. R.S.O.1980,c.398, s.32.

Provincial Court (Civil Division)

80.--(1) There shall be a court of record in and for the Judicial District of York and such other areas as are designated under subsection 83(1), to be named the Provincial Court (Civil Division).

(2) The Provincial Court (Civil Division) shall be presided over by a provincial judge.  
R.S.O.1980,c.397,s.2; 1982,c.58,s.3.

81.--(1) The jurisdiction of small claims courts under the Small Claims Courts Act or any other Act shall, in the Judicial District of York and each area designated under subsection 83(1), be exercised by the Provincial Court (Civil Division), except that in the Provincial Court (Civil Division) the maximum claim or value of \$1,000 set out in section 55 of the Small Claims Courts Act shall be \$3,000 in each instance and not as set out therein.

COMMENTS

SECTION 80

This section is derived from section 2 of the Provincial Court (Civil Division) Act.

SECTION 81

This section is derived from section 6 of the Provincial Court (Civil Division) Act.

EXISTING PROVISIONS

Provincial Court (Civil Division) Act:

2.--(1) There shall be a court of record in and for The Municipality of Metropolitan Toronto and such areas as are designated by the rules, named the Provincial Court (Civil Division).

(2) The Provincial Court (Civil Division) shall be presided over by a provincial judge appointed under the *Provincial Courts Act*.

6.--(1) The jurisdiction of the Provincial Court shall be the same as the jurisdiction of small claims courts under the *Small Claims Courts Act* or any other Act, except that in the Provincial Court the maximum claim or value of \$1,000 set out in section 55 of the *Small Claims Courts Act* shall be \$3,000 in each instance and not as set out therein

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Application of  
R.S.O. 1980,  
c. 476

(2) Except in so far as they are inconsistent with this Part or the rules made under this Part, the Small Claims Courts Act and the rules and regulations thereunder apply in the same manner as if the Provincial Court (Civil Division) and judges and officers thereof were small claims courts and judges and officers thereof and the proceedings in the Provincial Court (Civil Division) were proceedings in a small claims court.

Exception

(3) Sections 15 and 104 of the Small Claims Courts Act do not apply where the action is for more than \$1,000.

Divisions

(4) The divisions established under the Small Claims Courts Act in the Judicial District of York and the areas designated under subsection 83(1) are continued as local divisions of the Provincial Court (Civil Division), subject to amendment by the rules made under or adopted by this Act, and an office of the Provincial Court (Civil Division) shall be maintained in each local division, and, the provisions of the Small Claims Courts Act respecting the territorial jurisdiction of a small claims court in a division apply in respect of the office of the Provincial Court (Civil Division) in which an action is commenced and conducted.

References in  
other Acts

(5) A reference in or under any Act to a small claims court or a judge or officer thereof shall, in respect of the Judicial District of York or an area designated under subsection 83(1), be deemed to be a reference to the Provincial Court (Civil Division) or a judge or corresponding officer thereof. R.S.O. 1980, c. 397, s. 6.

COMMENTS

EXISTING PROVISIONS

(2) Except in so far as they are inconsistent with this Act or the rules, the Small Claims Courts Act and the rules and regulations thereunder apply in the same manner as if the Provincial Court and judges and officers thereof were small claims courts and judges and officers thereof and the proceedings in the Provincial Court were proceedings in a small claims court.

(3) Sections 15 and 104 of the Small Claims Courts Act do not apply where the action is for more than \$1,000.

6(4) The divisions established under the Small Claims Courts Act in The Municipality of Metropolitan Toronto and areas designated by the rules are continued as local divisions of the Provincial Court, subject to amendment by the rules, and an office of the Provincial Court shall be maintained in each local division, and the provisions of the Small Claims Courts Act respecting the territorial jurisdiction of a small claims court in a division apply in respect of the office of the Provincial Court in which proceedings are commenced and the action is conducted.

(5) A reference in or under any Act to a small claims court or a judge thereof shall, in respect of The Municipality of Metropolitan Toronto and areas designated by the rules, be deemed to be a reference to the Provincial Court or a judge thereof.



DRAFT COURTS OF JUSTICE ACT	COMMENTS	EXISTING PROVISIONS
<p>Transfer of actions from county courts or District Court</p> <p>82. Where an action that is within the jurisdiction of the Provincial Court (Civil Division) was commenced,</p> <p>(a) in the County Court of the Judicial District of York, before the 30th day of June, 1980; or</p> <p>(b) in the District Court in an area designated under subsection 83(1) before the date the designation was made,</p> <p>and no evidence has been heard in the action, the action shall, with the consent of the parties, be transferred to the Provincial Court (Civil Division) in the manner prescribed by the rules.</p> <p>R.S.O.1980,c.397,s.7(2).</p>	<p>SECTION 82</p> <p><u>This section is derived from subsection 7(2) of the Provincial Court (Civil Division) Act.</u></p> <p>SECTION 83</p> <p><u>Subsection (1) is derived from clause 9(1)(b) of the Provincial Court (Civil Division) Act.</u></p> <p><u>Subsection (2) replaces clauses 9(1)(a) and (c) of the Provincial Court (Civil Division) Act with more specific rule-making authority modelled on section 88 of the Courts of Justice Act.</u></p>	<p>(2) Where an action that is within the jurisdiction of the Provincial Court was commenced in the county court or in the Supreme Court in The Municipality of Metropolitan Toronto before the 30th day of June, 1980 or in a designated area before the effective date of the designation and no evidence has been heard in the action, the action shall, with the consent of the parties, be transferred to the Provincial Court in the manner prescribed by the rules.</p>
<p>Designation of areas in jurisdiction</p> <p>83.-(1) The Lieutenant Governor in Council may make regulations designating areas in which the Provincial Court (Civil Division) has jurisdiction.</p> <p>R.S.O.1980,c.397,s.9(1); 1982,c.58,s.6(1).</p> <p>Rules</p> <p>(2) The Lieutenant Governor in Council may make rules for the Provincial Court (Civil Division) in relation to the practice and procedure of the court and may make rules for the court, even though they alter or continue the substantive law, in relation to,</p> <p>(a) conduct of proceedings in the court;</p> <p>(b) joinder of claims and parties, settlement of claims by or against persons under disability, whether or not a proceeding has been commenced in respect of the claim;</p> <p>(c) commencement of proceedings and service of process in or outside Ontario;</p> <p>(d) disposition of proceedings without a hearing and the effect thereof;</p>		<p>9.-(1) The Lieutenant Governor in Council may make such rules as are considered necessary and desirable for the establishment and operation of the Provincial Court and, without restricting the generality of the foregoing, may make rules,</p> <p>(a) on any matter in respect of which rules may be made under section 190 of the <i>Small Claims Courts Act</i> or section 116 of the <i>Judicature Act</i> but having application to the Provincial Court and matters and proceedings within its jurisdiction;</p> <p>(b) designating areas in the territorial jurisdiction of the Provincial Court;</p> <p>(c) providing for sittings of the Provincial Court to be held at places in its territorial jurisdiction outside the local division in which the action is commenced but in the same judicial district.</p>

DRAFT COURTS OF JUSTICE ACT	COMMENTS	EXISTING PROVISIONS
<p>(e) pleadings;</p> <p>(f) discovery and other forms of disclosure before hearing, including the scope thereof and the use of such discovery and disclosure in a proceeding;</p> <p>(g) examination of witnesses in or out of court;</p> <p>(h) duties of clerks and other officers;</p> <p>(i) motions;</p> <p>(j) preservation of rights of parties pending the outcome of litigation, including sale, recovery of possession or preservation of property;</p> <p>(k) preparation for trial and offers to settle and their legal consequences;</p> <p>(l) the mode and conduct of trials;</p> <p>(m) providing for sittings of the Provincial Court (Civil Division) to be held at places outside the local division in which the action is commenced;</p> <p>(n) costs of proceedings;</p> <p>(o) enforcement of orders and process;</p> <p>(p) payment into and out of court;</p> <p>(q) any matter that is referred to in an Act as prescribed by rules of the Provincial Court (Civil Division) or small claims courts,</p> <p>and, where an Act contains provisions in respect of practice and procedure, the Lieutenant Governor in Council may make rules supplementing those provisions. R.S.O.1980,c.397.s.9.</p>	<p>SECTION 84</p> <p>Subsection (1) is derived from subsection 33(1) of the Provincial Courts Act. The closing language of the existing subsection, which requires the clerk to act at the direction of the judge, has been deleted pending further discussions with the judiciary.</p> <p>Subsection (2) is derived from subsection 33(2) of the Provincial Courts Act.</p>	<p><u>Provincial Courts Act:</u></p> <p>88.—(1) There shall be a clerk for each provincial court (criminal division) and each provincial court (family division) who shall act under the direction and supervision of the judge.</p> <p>(2) The clerk of a provincial court (criminal division) is the clerk of the provincial offences court of the same county or district.</p>

DRAFT COURTS OF JUSTICE ACT

- (e) pleadings;
  - (f) discovery and other forms of disclosure before hearing, including the scope thereof and the use of such discovery and disclosure in a proceeding;
  - (g) examination of witnesses in or out of court;
  - (h) duties of clerks and other officers;
  - (i) motions;
  - (j) preservation of rights of parties pending the outcome of litigation, including sale, recovery of possession or preservation of property;
  - (k) preparation for trial and offers to settle and their legal consequences;
  - (l) the mode and conduct of trials;
  - (m) providing for sittings of the Provincial Court (Civil Division) to be held at places outside the local division in which the action is commenced;
  - (n) costs of proceedings;
  - (o) enforcement of orders and process;
  - (p) payment into and out of court;
  - (q) any matter that is referred to in an Act as prescribed by rules of the Provincial Court (Civil Division) or small claims courts,
- and, where an Act contains provisions in respect of practice and procedure, the Lieutenant Governor in Council may make rules supplementing those provisions. R.S.O.1980,c.397.s.9.

Clerks and Probation Officers

84.—(1) There shall be such clerks for the Provincial Court (Criminal Division), the Provincial Court (Family Division) and the Provincial Court (Civil Division) as are considered necessary, appointed under the Public Service Act.

(2) Each clerk of the Provincial Court (Criminal Division) is a clerk of the Provincial Offences Court. R.S.O.1980,c.398,s.33.

Clerks

H.S.O.1980,  
c.413

Idem

DRAFT COURTS OF JUSTICE ACT		COMMENTS		EXISTING PROVISIONS
Powers of probation officers	85. Every probation officer appointed for the Provincial Court (Family Division) has, while acting in the discharge of his or her duties, all the powers of a police constable. R.S.O.1980, c.398, s.31.	SECTION 85 This section is derived from section 31 of the <u>Provincial Courts Act</u> .		31. Every probation officer appointed for a provincial court (family division) has, while acting in the discharge of his duties, all the powers of a police constable.
Regulations	Regulations 86. The Lieutenant Governor in Council may make regulations, (a) specifying the returns to be made by provincial courts; (b) fixing the remuneration of provincial judges; (c) providing for the benefits to which provincial judges are entitled, including, (i) leave of absence and vacations, (ii) sick leave credits and payments in respect of such credits, (iii) pension benefits for provincial judges and their surviving spouses and children, and for the transfer or other disposition of benefits thereof to which persons appointed as provincial judges under this Part were entitled under the Public Service Act or the Public Service Superannuation Act at the time of their appointment under this Part; (d) providing for the appointment and employment of court reporters and fixing their fees, expenses and other forms of remuneration;	SECTION 86 This section is derived from section 34 of the <u>Provincial Courts Act</u> .		34.—(1) The Lieutenant Governor in Council may make regulations, (a) specifying the returns to be made by judges and Chief Judges; (b) providing for the safekeeping, inspection and destruction of books, documents and papers of provincial courts and judges; (c) fixing the remuneration of judges; (d) providing for the benefits to which judges are entitled, including, (i) leave of absence and vacations, (ii) sick leave credits and payments in respect of such credits, (iii) pension benefits for judges and their widows and surviving children, and for the transfer or other disposition of benefits in respect thereof to which persons appointed as judges under this Act were entitled under the <i>Public Service Act</i> or the <i>Public Service Superannuation Act</i> at the time of their appointment under this Act; (e) providing for the appointment and employment of stenographic reporters to take down evidence before judges, and fixing their fees, expenses and other forms of remuneration; (f) prescribing the duties of Chief Judges; (g) prescribing the functions of and providing for the management of detention and observation homes, detention homes, and diagnostic clinics under this Act;



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COMMENTS

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- (h) prescribing additional powers and duties of superintendents of observation and detention homes;
  - (i) governing the procedures for admission to and discharge of children from observation and detention homes or any class thereof;
  - (j) defining "services" for the purposes of section 27 and prescribing the terms and conditions upon which such services may be provided;
  - (k) prescribing the classes of payments by way of provincial aid to any observation and detention home and the methods of determining the amounts of payments and providing for the manner and time of payment and the terms and conditions of the payment thereof and the suspension and withholding of payments and for the making of deductions from payments;
  - (l) prescribing the duties of the officers and employees of the staffs of provincial courts or of any class of such officers or members;
  - (m) providing for a system of statistical records relating to provincial courts;
  - (n) respecting any matter considered necessary or advisable to carry out effectively the intent and purpose of this Act.
- (2) Any regulation made under subsection (1) may be general or particular in its application.

- (e) prescribing the duties of the clerks and employees of provincial courts or of any class of such employees;
- (f) providing for a system of statistical records relating to provincial courts.  
R.S.O. 1980, c. 390, s. 34.

DRAFT COURTS OF JUSTICE ACT		COMMENTS	EXISTING PROVISIONS
Rules Committee	<p>PART V</p> <p>RULES OF CIVIL PROCEDURE</p> <p>87.--(1) The Rules Committee continued under the <u>Judicature Act</u>, being chapter 223 of the Revised Statutes of Ontario, 1980, is continued as the Rules Committee of the Supreme and District Courts and shall be composed of,</p> <p>(a) the Chief Justice of Ontario, the Chief Justice of the High Court, the Associate Chief Justice of Ontario and the Associate Chief Justice of the High Court;</p> <p>(b) four judges of the Supreme Court, who shall be appointed by the Chief Justice of Ontario;</p> <p>(c) the Chief Judge and Associate Chief Judge of the District Court;</p> <p>(d) four District Court judges, who shall be appointed by the Chief Judge of the District Court;</p> <p>(e) the Attorney General or such law officer of the Crown as the Attorney General may from time to time appoint;</p> <p>(f) the Senior Master;</p> <p>(g) the Registrar of the Supreme Court;</p> <p>(h) a sheriff or a local registrar of the Supreme or District Court, who shall be appointed by the Attorney General;</p> <p>(i) five barristers or solicitors, who shall be appointed by the Benchers of The Law Society of Upper Canada in convocation; and</p> <p>(j) five other barristers and solicitors, who shall be appointed by the Chief Justice of Ontario.</p>	<p>SECTION 87</p> <p>Subsection (1) is derived from subsection 116(1) of the <u>Judicature Act</u>. The name of the Rules Committee has been expanded to distinguish it from the other rules committees. There are a few changes in the composition of the Rules Committee:</p> <p>The Associate Chief Judge of the District Court is added as a member of the committee.</p> <p>Two additional District Court judges are added to the committee. The District Court judges will be appointed to the committee by the Chief Judge of the District Court.</p> <p>A sheriff or local registrar is added to the committee, to provide the committee with additional expertise on rules having an impact on the workings of the court offices.</p> <p>The number of lawyers on the committee has been increased to provide additional expertise from the practicing bar.</p>	<p>116.--(1) The Rules Committee shall continue to be composed of,</p> <p>(a) the Chief Justice of Ontario, the Chief Justice of the High Court, the Associate Chief Justice of Ontario, the Associate Chief Justice of the High Court and four other judges of the Supreme Court to be appointed by the Chief Justice of Ontario;</p> <p>(b) the Chief Judge of the County and District Courts;</p> <p>(c) two county or district court judges who shall be appointed by the Attorney General;</p> <p>(d) the Attorney General or such law officer of the Crown as he may from time to time appoint;</p> <p>(e) the Senior Master;</p> <p>(f) the Registrar of the Supreme Court;</p> <p>(g) three barristers or solicitors who shall be appointed by the Benchers of the Law Society of Upper Canada in convocation; and</p> <p>(h) such other barristers or solicitors, not exceeding three at any one time, as may be appointed by the Chief Justice of Ontario</p>

DRAFT COURTS OF JUSTICE ACT		EXISTING PROVISIONS	
COMMENTS			
Idem	<p>(2) The Chief Justice of Ontario shall preside over the Rules Committee but, where the Chief Justice of Ontario is absent or so requests, the Chief Justice of the High Court shall preside.</p> <p>(3) The Chief Justice of Ontario and the Chief Justice of the High Court may jointly appoint either the Associate Chief Justice of Ontario or the Associate Chief Justice of the High Court to preside over the Rules Committee at such times as are set out in the appointment.</p> <p>(4) Each of the members of the Rules Committee appointed under clause (1)(b), (d), (h), (i) or (j) shall hold office for a period of three years and is eligible for reappointment.</p>	<p>(2) The Chief Justice of Ontario is the chairman of the Rules Committee, but, in his absence or at his request, the Chief Justice of the High Court shall preside. c. 228, s. 114 (2).</p> <p>(3) The Chief Justice of Ontario and the Chief Justice of the High Court may jointly appoint either the Associate Chief Justice of Ontario or the Associate Chief Justice of the High Court to act as chairman from time to time as set out in the appointment.</p> <p>(4) Each of the members of the Rules Committee appointed under clause (1)(a), (c) or (g) shall hold office for a period of three years and is eligible for a reappointment.</p> <p>(5) Each of the members of the Rules Committee appointed under clause (1)(h) shall hold office for a period of one year and is eligible for reappointment.</p>	
Vacancies	<p>(5) Where a vacancy occurs among the members appointed under clause (1)(b), (d), (h), (i) or (j), a new member similarly qualified may be appointed for the remainder of the unexpired term. R.S.O. 1980, c. 223, s. 116(1-6).</p>	<p>(6) In case of the resignation, death or inability to act of any member appointed under clause (1)(a), (c), (g) or (h), the Chief Justice of Ontario, Attorney General or Benchers of the Law Society of Upper Canada, as the case may be, may appoint another member similarly qualified to hold office for the unexpired portion of the term of the member who has resigned or died or is unable to act</p>	
Quorum	<p>(6) A majority of the members of the Rules Committee constitutes a quorum. R.S.O. 1980, c. 223, s. 116(7).</p>	<p>(7) A majority of the members of the Rules Committee constitutes a quorum.</p>	



DRAFT COURTS OF JUSTICE ACT		COMMENTS	EXISTING PROVISIONS
Rules of Civil Procedure	<p>88. Subject to the approval of the Lieutenant Governor in Council, the Rules Committee of the Supreme and District Courts may make rules for the Supreme Court and the District Court in relation to the practice and procedure of the courts and may make rules for such courts, even though they alter or continue the substantive law, in relation to,</p> <ul style="list-style-type: none"><li>(a) conduct of proceedings in the courts;</li><li>(b) joinder of claims and parties, settlement of claims by or against persons under disability, whether or not a proceeding has been commenced in respect of the claim, and representation of parties;</li><li>(c) commencement of proceedings and service of process in or outside Ontario;</li><li>(d) disposition of proceedings without a hearing and the effect thereof;</li><li>(e) pleadings;</li><li>(f) discovery and other forms of disclosure before hearing, including the scope thereof and the use of such discovery and disclosure in a proceeding;</li><li>(g) examination of witnesses in or out of court;</li><li>(h) jurisdiction of local judges, including the conferral on local judges of any jurisdiction of the Supreme Court or a judge thereof, including jurisdiction under a statute, but not including the trial of actions;</li><li>(i) jurisdiction of masters, including the conferral on masters of any jurisdiction of the Supreme Court, including jurisdiction under a statute, but not including the trial of actions and jurisdiction conferred by a statute on a judge;</li><li>(j) jurisdiction and duties of officers;</li><li>(k) motions and applications, including the hearing of motions in the absence of the public and prohibiting a party from making motions without leave;</li></ul>	<p>SECTION 88</p> <p>Section 88 replaces subsections 116(10), (11) and (12) of the <u>Judicature Act</u>. The provision has been drafted after a complete review of the new Rules of Civil Procedure.</p>	<p>(10) Subject to the approval of the Lieutenant Governor in Council, the Rules Committee may at any time amend or repeal any of the rules and may make any further or additional rules for carrying this Act into effect, and in particular for,</p> <ul style="list-style-type: none"><li>(a) regulating the sittings of the courts;</li><li>(b) regulating the pleading, practice and procedure in the Supreme Court and in the county and surrogate courts;</li><li>(c) prescribing the rate of interest to be used in determining the capitalized value of an award in respect of future damages;</li><li>(d) allowing service out of Ontario;</li><li>(e) prescribing and regulating the proceedings under any statute that confers jurisdiction upon the court or a judge;</li><li>(f) prescribing the time and manner for making an appeal to the Divisional Court;</li><li>(g) fixing the vacations;</li><li>(h) empowering the masters or the local judges, or the local masters in respect of actions brought in their counties, to do any such thing, and to transact any such business, and to exercise any such authority and jurisdiction in respect of the same as are or may be done, transacted or exercised by a judge of the Supreme Court in court upon motions for judgment in undefended actions, for the appointment of receivers by way of equitable execution and for <i>ex parte</i> injunctions and upon motions or as are specified in the rules except in respect of matters relating to,</li><li>(i) the liberty of the subject,</li><li>(ii) appeals and applications in the nature of appeals,</li><li>(iii) proceedings under the <i>Mental Incompetency Act</i>,</li><li>(iv) applications for advice under the <i>Trustee Act</i>,</li><li>(v) matters affecting the custody of children, other than interlocutory applications for their interim custody or maintenance,</li><li>(vi) proceedings enabling minors to make binding settlements of their real and personal property on marriage;</li></ul>

DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

- (l) preservation of rights of parties pending the outcome of litigation, including sale, recovery of possession or preservation of property;
- (m) preparation for trial and offers to settle and their legal consequences;
- (n) the mode and conduct of trials, including use of reports of experts appointed by the court;
- (o) the discount rate to be used in determining the amount of an award in respect of future pecuniary damages;
- (p) references of proceedings or issues in a proceeding and the powers of a person conducting a reference;
- (q) costs of proceedings, including security for costs;
- (r) enforcement of orders and process;
- (s) the time for and procedure on appeals and stays pending appeal;
- (t) payment into and out of court;
- (u) any matter that is referred to in an Act as provided for by rules of court,

and, where an Act contains provisions in respect of practice and procedure, the Rules Committee of the Supreme and District Courts may make rules supplementing those provisions. R.S.O.1980,c.223, s.116(10,11).

- (i) prescribing motions that need not be heard in open court;
- (j) regulating generally any matters relating to the practice and procedure of the courts or to the duties of the officers thereof, or to the costs of proceedings therein, and every other matter deemed expedient for better attaining the ends of justice, advancing the remedies of suitors and carrying into effect this Act and all other Acts respecting the courts.
- (11) Where provisions in respect of practice or procedure are contained in any statute, rules may be made modifying such provisions to any extent that is considered necessary for adapting them to the general practice and usage of the court, unless that power is expressly excluded
- (12) Any provisions relating to the payment, transfer or deposit into, or in, or out of any court of any money or property, or to the dealing therewith, shall, for the purposes of this section, be deemed to be provisions relating to practice and procedure.

DRAFT COURTS OF JUSTICE ACT

PART VI

JUDGES, OFFICERS AND STAFF

Oath of  
office

89. Every judge or officer of a court of record in Ontario shall, before entering on the duties of, office, take and sign the following oath or affirmation:

I solemnly swear (affirm) that I will faithfully, and to the best of my skill and knowledge, execute the duties of .....  
So help me God (delete this line in an affirmation). R.S.O.1980,c.223,s.84(1).

COMMENTS

SECTION 89

This section is derived from subsections 10(1), 84(1) and 103(2) of the Judicature Act, section 11 of the County Judges Act, sections 10 and 13 of the Surrogate Courts Act, section 20 of the Unified Family Court Act, subsection 3(1) of the Provincial Courts Act and subsection 11(2) of the Small Claims Courts Act.

EXISTING PROVISIONS

Judicature Act:

10.—(1) A judge, before entering on the duties of his office, shall take and subscribe the following oath:

I do solemnly and sincerely promise and swear that I will duly and faithfully, and to the best of my skill and knowledge, execute the powers and trust reposed in me as.....  
So help me God.

84.—(1) Every officer shall, before entering upon the duties of his office, take and subscribe the following oath:

I,....., of....., solemnly swear that I will according to the best of my skill, learning, ability and judgment, well and faithfully execute and fulfill the duties of the office of.....without favour or affection, prejudice or partiality to any person. So help me God

103(2) Every such reporter shall take and subscribe the following oath before a judge of the court to which he is appointed, and the oath shall be filed with the proper officer of that court:

I,....., solemnly and sincerely promise and swear that I will faithfully report the evidence and proceedings in each case in which I act as stenographic reporter. So help me God

County Judges Act:

11. Every judge shall take and subscribe the following oath before the chief judge or a judge designated by him:

I,....., do swear that I will, truly and faithfully, according to my skill and knowledge, execute the several duties, powers and trusts of judge of the Court of the ..... of .....  
So help me God

Surrogate Courts Act:

10. Every judge of the surrogate court shall take and subscribe the following oath before the chief judge or a judge designated by him:

I,....., do swear that I will, truly and faithfully according to my skill and knowledge, execute the several duties, powers and trusts of judge of The Surrogate Court of the .....  
So help me God



DRAFT COURTS OF JUSTICE ACT	COMMENTS	EXISTING PROVISIONS
		<p>13. Every registrar, before entering upon the duties of his office, shall take and subscribe the following oath:</p> <p>I, ..... do swear that I will diligently and faithfully execute the office of Registrar of the Surrogate Court of the ..... and that I will not knowingly permit or suffer any alteration, obliteration or destruction to be made or done, of any will or testamentary paper, or other document or paper committed to my charge. So help me God</p> <p><u>Unified Family Court Act:</u></p> <p>20. Every Judge shall take and sign the following oath of office before commencing his duties</p> <p>I ..... swear (or solemnly affirm) that I will truly and faithfully execute the duties, powers and trusts of a Judge presiding over the Unified Family Court, to the best of my skill and knowledge</p> <p>So help me God (Omit this line in an affirmation)</p> <p><u>Provincial Courts Act:</u></p> <p>3.—(1) Every judge shall take and subscribe the following oath before a chief judge or a judge designated by him</p> <p>I... do swear that I will truly and faithfully, according to my skill and knowledge, execute the several duties, powers and trusts of the Provincial Courts, so help me God</p> <p>and also the oath of allegiance as required by the <i>Public Officers Act</i></p> <p><u>Small Claims Courts Act:</u></p> <p>// (2) Every judge appointed under this section shall take and subscribe the following oath before the Chief Judge of the County and District Courts or a judge designated by him</p> <p>I do swear that I will truly and faithfully according to my skill and knowledge, execute the several duties powers and trusts of the Small Claims Courts, so help me God</p> <p>and also the oath of allegiance as required by the <i>Public Officers Act</i></p>

DRAFT COURTS OF JUSTICE ACT

Persona  
designata  
abolished

90. Where an adjudicative function is given by statute to a judge or officer of a court of record in Ontario, the jurisdiction shall be deemed to be given to the court. New.

COMMENTS

SECTION 90

Provincial statutes often give jurisdiction to "a judge of the county or district court" or "a judge of the Supreme Court", instead of simply referring to "the court". This form of language arises particularly frequently in statutes that can be traced to the latter part of the 19th century. Over the years, provisions giving jurisdiction to "a judge" instead of "a court" generated a great deal of litigation on the issue of whether the judge was to act as the court or as a persona designata. In many cases, it was decided that the judge was acting as persona designata.

Where a judge acts as persona designata, several consequences follow. Since the judge is not acting as the court, the rules of court do not apply, the powers of the court do not apply and no appeal may be taken. These consequences have resulted in considerable confusion. Some of the most serious drawbacks of the persona designata concept have been dealt with in the Judges' Orders Enforcement Act. That Act provides for enforcement of the orders of a judge acting as persona designata, for the judge to have jurisdiction to award costs and for an appeal from the judge's order. However, the Act leaves many other issues unresolved.

The concept of judges acting persona designata has been severely criticized. In recent years, a series of Supreme Court of Canada decisions has dramatically altered the law of persona designata: Herman v. Deputy Attorney General of Canada, [1979] 1 S.C.R. 729; Reference re Residential Tenancies Act, [1981] 1 S.C.R. 714; Minister of Indian Affairs and Northern Development v. Ranville (1982), 44 N.R. 616. These cases establish the principle that a judge will be acting persona designata only if there is an express provision to that effect. This test effectively abolishes the concept of persona designata. To eliminate any lingering doubts, section 90 of the Courts of Justice Act provides that, where an adjudicative function is given by statute to a judge or officer of a court, the jurisdiction shall be deemed to be given to the court.

EXISTING PROVISIONS

DRAFT COURTS OF JUSTICE ACT

Liability  
of Judges

91. Every judge of a court of record in Ontario and every master of the Supreme Court has the same immunity from liability as a judge of the Supreme Court. New.

Compensation  
of Judges for  
statutory duties

92. Every judge of the Supreme Court and of the District Court shall be paid out of the Consolidated Revenue Fund the annual sum of \$3,000, payable quarterly, as compensation for the services the judge is called on to render by any Act of the Legislature in addition to his or her ordinary duties. R.S.O.1980,c.149,s.2.

Extra-judicial  
services

93.-(1) A judge of the Supreme Court or the District Court may act as a conciliator, arbitrator or referee or on a commission of inquiry under an Act of the Legislature or under an agreement made under any such Act.

Remuneration

(2) A judge acting under subsection (1) shall not receive any remuneration but shall be reimbursed for reasonable travelling and other expenses incurred while so acting. R.S.O.1980, c.149,s.3.

COMMENTS

SECTION 91

Subsection 100(4) of the Judicature Act and section 13 of the Provincial Courts Act provide that, subject to any additional common law defences, the Public Authorities Protection Act applies to masters and provincial judges in the same manner as it applies to justices of the peace. Section 2 of that Act protects a justice of the peace from liability where he or she acts within jurisdiction, unless the act was done maliciously and without reasonable or probable cause. However, under subsection 3(1) of that Act, a justice of the peace is absolutely liable if he or she acts without jurisdiction. These provisions essentially codify the common law that was traditionally thought to be applicable to all inferior court judges.

The distinctions that the traditional common law made between different categories of judges and acts done within and outside jurisdiction were criticized by the English Court of Appeal in *Sirros v. Moore*, [1974] 3 All E.R. 776. The English Court of Appeal's decision has been cited with approval in two Ontario cases: *Re Clendenning and Board of Police Commissioners for City of Belleville* (1977), 15 O.R.(2d) 97 at 101 (Div. Ct.); *Unterreiner v. Wilson*, unreported, Dec. 8, 1982 (H.C.J.).

The new section adopts the principles of the English Court of Appeal decision, and provides that all judges have the same immunity from liability as judges of the Supreme Court. The new section also applies to masters.

SECTION 92

This section is derived from section 2 of the Extra-Judicial Services Act.

SECTION 93

This section is derived from section 3 of the Extra-Judicial Services Act.

EXISTING PROVISIONS

Judicature Act:

100(4) The *Public Authorities Protection Act* applies to masters in the same manner and to the same extent as it applies to justices of the peace, without limiting any other defences available to masters under the law in respect of acts done in the execution of their duties.

Provincial Courts Act:

18. The *Public Authorities Protection Act* applies to judges in the same manner and to the same extent as it applies to justices of the peace, without limiting any other defences available to judges under the law in respect of acts done in the execution of their duties.

Extra-Judicial Services Act:

1. In this Act, "judge" means a judge of a court in Ontario, to whom the *Judges Act* (Canada) applies.

2. Every judge shall be paid out of the Consolidated Revenue Fund the annual sum of \$3,000, payable quarterly, as compensation for the services that he is called on to render by any Act of the Legislature in addition to his ordinary duties.

3.-(1) A judge may act as a conciliator, arbitrator, referee or on a commission of inquiry pursuant to an Act of the Legislature or pursuant to an agreement made under any such Act

(2) Notwithstanding any statutory provision, regulation, rule, order or agreement, where a judge acts as a conciliator, arbitrator or referee he shall not receive any remuneration for his services other than such transportation and living allowance as the Lieutenant Governor in Council may fix by general or special order



DRAFT COURTS OF JUSTICE ACT

Inquiries of  
Legal Offices

Inspection

Inquiries by  
Inspector

Destruction  
of documents

94.--(1) The Lieutenant Governor in Council may appoint an Inspector of Legal Offices.

(2) The Inspector may inspect all court offices and such other offices connected with the administration of justice as the Attorney General designates. R.S.O.1980,c.223,s.107(1).

(3) The Inspector may inquire into the administration of any office that he or she is entitled to inspect and may require any person, other than a judge or master, to give evidence on oath or affirmation, and for that purpose the Inspector has the same power to summon witnesses and compel the production of documents as the Supreme Court. R.S.O.1980,c.223,s.108(2).

(4) Documents and other material that are no longer required in a court office shall be disposed of in accordance with the directions of the Inspector, subject to the approval of,

- (a) in the Supreme Court, the Chief Justice of Ontario;
- (b) in the District Court, the Unified Family Court, the surrogate courts and the small claims courts, the Chief Judge of the District Court;
- (c) in the Provincial Court (Criminal Division) and the Provincial Offences Court, the Chief Judge of the Provincial Court (Criminal Division);
- (d) in the Provincial Court (Family Division), the Chief Judge of the Provincial Court (Family Division);
- (e) in the Provincial Court (Civil Division), the senior judge. R.S.O.1980,c.223,s.108(4).

COMMENTS

SECTION 94

Subsections (1) and (2) are derived from subsection 107(1) of the Judicature Act. The Attorney General, as member of the Executive Council responsible for the administration of justice, is given authority to delineate the offices that the Inspector may inspect, rather than the Lieutenant Governor in Council.

Subsection (3) is derived from subsections 108(2) and (3) of the Judicature Act.

Subsection (4) is derived from subsection 108(4) of the Judicature Act, section 19 of the Surrogate Courts Act, clause 22(b) of the Unified Family Court Act, clause 34(1)(b) of the Provincial Courts Act and section 179 of the Small Claims Courts Act. The new provision states that documents will be disposed of in accordance with the directions of the Inspector. The criteria for disposing of documents have been prepared by the Inspector and approved by the chief judges of the various courts.

EXISTING PROVISIONS

107.--(1) The Lieutenant Governor in Council may appoint an officer, to be called the Inspector of Legal Offices, to inspect the offices of the Supreme Court, of local courts, of Crown attorneys, and such other offices connected with the administration of justice as the Lieutenant Governor in Council may direct.

(2) Where the Inspector has occasion to inquire into the conduct of any officer, other than a master, in relation to his official duties or acts, he may require the officer or any other person to give evidence before him on oath, and for that purpose he has the same power to summon the officer or other person to attend as a witness, to enforce his attendance and to compel him to produce books and documents and to give evidence, as any court has in civil cases.

(3) The officers shall, when and as often as required by the Inspector, produce for examination and inspection all books and documents that are required to be kept by them, and shall report to the Inspector all such matters relating to any cause or proceeding as the Inspector requires.

(4) Where books, documents, papers or other material have been preserved in the Supreme Court or in a county or district court for so long that it appears they need not be preserved any longer, an order authorizing the Inspector to cause their destruction or other disposition may be made.

- (a) in the Supreme Court by the Chief Justice of Ontario; and
- (b) in the other courts, by the Chief Judge of the County and District Courts

Surrogate Courts Act:

19. Where books, documents, papers or other material have been preserved in the office of the registrar for so long that it appears they need not be preserved any longer, an order authorizing the Inspector of Legal Offices to cause their destruction or other disposition may be made by the Chief Judge of the County and District Courts.

DRAFT COURTS OF JUSTICE ACT		COMMENTS		EXISTING PROVISIONS		
Official Guardian	95.--(1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint an Official Guardian. <u>New.</u>	SECTION 95 Subsections (1) and (2) are derived from subsection 109(1) of the <u>Judicature Act.</u>		Unified Family Court Act:  22. The Lieutenant Governor in Council may make regulations,  (b) providing for the safekeeping, inspection and destruction of books, documents and papers of the Court.	Unified Family Court Act:  22. The Lieutenant Governor in Council may make regulations,  (b) providing for the safekeeping, inspection and destruction of books, documents and papers of the Court.	
	(2) No person shall be appointed Official Guardian unless he or she has been a member of the bar of one of the provinces of Canada for at least ten years.					
Qualifications	(3) The Official Guardian shall be the litigation guardian of minors and other persons in accordance with an Act, the Rules of Civil Procedure or an order of the Supreme Court.	SECTION 95 Subsections (1) and (2) are derived from subsection 109(1) of the <u>Judicature Act.</u>		Provincial Courts Act:  34.--(1) The Lieutenant Governor in Council may make regulations,  (b) providing for the safekeeping, inspection and destruction of books, documents and papers of provincial courts and judges;	Provincial Courts Act:  34.--(1) The Lieutenant Governor in Council may make regulations,  (b) providing for the safekeeping, inspection and destruction of books, documents and papers of provincial courts and judges;	
Duties						Small Claims Courts Act:  179. Where books, documents or papers have been preserved in a small claims court for so long that it appears that they need not be preserved any longer, the Chief Judge of the County and District Courts may make an order authorizing the Inspector to cause their destruction or other disposition.
		SECTION 95 Subsections (1) and (2) are derived from subsection 109(1) of the <u>Judicature Act.</u>		Judicature Act:  109.--(1) No person shall be appointed Official Guardian unless he is a barrister and solicitor of Ontario of not less than ten years standing		
		SECTION 95 Subsections (1) and (2) are derived from subsection 109(1) of the <u>Judicature Act.</u>		(2) The Official Guardian shall be the guardian <i>ad litem</i> or next friend of minors and other persons in accordance with any Act or the rules or an order of a court or judge.		
		SECTION 95 Subsections (1) and (2) are derived from subsection 109(1) of the <u>Judicature Act.</u>		(2) The Official Guardian shall be the guardian <i>ad litem</i> or next friend of minors and other persons in accordance with any Act or the rules or an order of a court or judge.		

DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

Costs

(4) The same costs as are payable to litigation guardians are payable to the Official Guardian and costs recovered by the Official Guardian shall be paid into the Consolidated Revenue Fund. R.S.O. 1980, c.223, s.109(1-3).

Subsection (4) is derived from subsection 109(3) of the Judicature Act. The new provision requires costs recovered by the Official Guardian to be paid into the Consolidated Revenue Fund.

(3) The same costs as are payable to counsel and solicitors are payable to the Official Guardian, but all costs paid to him shall be entered in his books of account or may be paid into court to the credit of an account entitled "Account of the Official Guardian".

Security for costs

(5) The Official Guardian shall not be required to give security for costs in any proceeding. R.S.O. 1980, c.223, s.109(15).

Subsection (5) is derived from subsection 109(15) of the Judicature Act.

(15) Unless otherwise ordered by the court or a judge, the Official Guardian shall not be required to give security for the cost of any proceeding.

Agents outside Toronto

(6) The Official Guardian may retain solicitors outside Toronto as agents for the purpose of any proceeding carried on outside Toronto. R.S.O. 1980, c.223, s.109(11).

Subsection (6) is derived from subsection 109(11) of the Judicature Act.

(11) The Official Guardian may retain solicitors out of Toronto as agents for the purpose of any proceeding being carried on out of Toronto, and a solicitor so retained is entitled to the same costs for the work actually done by him as the Official Guardian would have been entitled to if the work had been done by him, and such costs shall be paid to the Official Guardian and the agent's fees and disbursements shall be paid by the Official Guardian and shall be deemed a disbursement of the Official Guardian.

Mortgages held by Accountant

(7) Where a person for whom the Official Guardian has acted is interested in a mortgage held by the Accountant, the Official Guardian shall take reasonable care to ensure that,

Subsection (7) is derived from existing rule 724, which will not appear in the new Rules.

724. It is the duty of the Official Guardian to see that moneys payable on mortgages held by the Accountant, in which persons for whom the Guardian has acted are interested, are promptly paid, and that the mortgaged premises are kept properly insured, and that the taxes thereon are duly paid.

(a) money payable on the mortgage is promptly paid;

(b) the mortgaged property is kept properly insured; and

(c) taxes on the mortgaged property are promptly paid.

Payment into court

(8) Money received by the Official Guardian on behalf of a person for whom he or she acts shall, unless the court orders otherwise, be paid into court to the credit of the person entitled.

Subsection (8) is derived from existing subrule 737(2), which will not appear in the new Rules.

737.—(2) All money received by the Official Guardian on behalf of minors, mentally incompetent persons, absentees or other persons for whom he acts shall, without order, be paid into court to the credit of the person entitled.



DRAFT COURTS OF JUSTICE ACT		COMMENTS		EXISTING PROVISIONS	
Assessment of costs	(9) Where the amount payable into court under subsection (8) is to be ascertained by the deduction of unassessed costs from a fund, the Official Guardian may require the costs to be assessed forthwith. <u>New.</u>	Subsection (9) is derived from existing subrule 737(6), which will not appear in the new Rules.		(6) Where the amount of money payable into court under this rule is ascertained by the deduction of untaxed costs from a fund, the Official Guardian may require such costs to be taxed, and the solicitor who has received such costs shall forthwith pay into court for the minor or mentally incompetent person or absentee any balance that is found to be due as a result of such taxation.	
Audit	(10) The Provincial Auditor shall examine and report on the accounts and financial transactions of the Official Guardian. R.S.O.1980,c.223, s.109(12).	Subsection (10) is derived from subsection 109(12) of the <u>Judicature Act</u> .		<u>Judicature Act:</u> 109(12) The Provincial Auditor shall examine and report upon the accounts and financial transactions of the Official Guardian	
Assessment officers	96.--(1) The Registrar of the Supreme Court of Ontario, each master, local registrar and deputy local registrar of the Supreme Court and local registrar and deputy local registrar of the District Court is an assessment officer.  (2) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint such additional assessment officers as are considered necessary.	SECTION 96  Taxing officers are now appointed under section 83 of the <u>Judicature Act</u> , a general provision dealing with the appointment of officers of the Supreme Court. Subsection (1) gives specific statutory recognition to this office. It provides that the Registrar of the Supreme Court and each master, local registrar and deputy local registrar is an assessment officer. The new Act and Rules replace the term "taxing officer" with the more modern term "assessment officer".  Subsection (2) provides for the appointment of additional assessment officers.			
Jurisdiction	(3) Every assessment officer has the jurisdiction conferred by the Rules of Civil Procedure. <u>New.</u>	Subsection (3) gives every assessment officer the jurisdiction conferred by the Rules of Civil Procedure.			
Official examiners	97.--(1) Every local registrar and deputy local registrar of the Supreme Court and local registrar and deputy local registrar of the District Court is an official examiner for the county or district for which he or she is appointed.  (2) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint additional official examiners. R.S.O.1980,c.223, s.104(1,2).	SECTION 97  Subsections (1) and (2) are derived from subsections 104(1) and (2) of the <u>Judicature Act</u> and section 10 of the <u>County Courts Act</u> .		104.--(1) Every local registrar, deputy registrar and clerk of the county court is <i>ex officio</i> a special examiner for the county for which he is appointed  (2) The Lieutenant Governor in Council may appoint additional special examiners.  <u>County Courts Act:</u>  10.--(1) The special examiners of the Supreme Court are officers of the county court and district courts, and they possess the like powers in county and district court cases as they possess in cases in the Supreme Court.  (2) The clerk of a county court or district court may act as a special examiner in any action in any county court or district	
Additional official examiners					

DRAFT COURTS OF JUSTICE ACT		COMMENTS	EXISTING PROVISIONS
Deputy official examiners	(3) With the approval of the Attorney General, every official examiner may appoint a deputy official examiner who may exercise and perform all the powers and duties of the official examiner. R.S.O.1980,c.223,s.104(7).	Subsection (3) replaces subsection 104(7) of the Judicature Act. It is modelled on subsections 20(3) and 36(2) of the Courts of Justice Act, which are derived from section 85 of the Judicature Act.	<u>Judicature Act:</u>  104(7) In case of the absence on leave or illness of any other special examiner he may, with the approval of the Chief Justice of Ontario, appoint a deputy to act for him during such absence or illness.
Court staff	98.--(1) Court reporters, translators and interpreters and such employees as are considered necessary for the administration of the courts in Ontario shall be appointed under the Public Service Act. R.S.O.1980,c.100,s.4(1); R.S.O.1980,c.398,s.33(3); R.S.O.1980,c.555,s.17.	SECTION 98  Subsection (1) replaces the provisions of subsection 14(1) of the County Judges Act concerning court reporters. It also provides specifically for the appointment of interpreters and translators and replaces the provisions of section 4 of the County Courts Act, section 17 of the Unified Family Court Act and subsection 33(3) of the Provincial Courts Act concerning the appointment of court staff.	<u>County Judges Act:</u>  14.--(1) The Lieutenant Governor in Council may appoint one or more court reporters for the local courts of any county or provisional judicial district, and, where more than one is appointed for a county or provisional judicial district, the Lieutenant Governor in Council may designate one of them as the senior court reporter.  <u>County Courts Act:</u>  4.--(1) The Lieutenant Governor in Council may appoint a clerk for each county court, and may appoint such persons to the staff of the clerk's office as he considers necessary and may fix their position specifications, salary ranges, and terms and conditions of employment.  (2) The Attorney General, or any public servant designated by him in writing for the purpose, may make temporary appointments to the staff of the clerk's office for a term not exceeding one year.  <u>Unified Family Court Act:</u>  17. A clerk of the Court and such officers and employees as are considered necessary shall be appointed for the Court under the Public Service Act.  <u>Provincial Courts Act:</u>  33(3) Such officers, clerks and employees as are considered necessary shall be appointed for provincial courts under the Public Service Act.
Officers of court	(2) Every court reporter, translator and interpreter is an officer of the court for which he or she is appointed. R.S.O.1980,c.223,s.103(1).	Subsection (2) replaces subsection 103(1) of the Judicature Act. It also makes interpreters and translators officers of the courts for which they are appointed.	<u>Judicature Act:</u>  103.--(1) The stenographic reporters are officers of the court to which they are appointed, and shall perform such other duties as are assigned to them by the Lieutenant Governor in Council or by the rules.

DRAFT COURTS OF JUSTICE ACT		COMMENTS		EXISTING PROVISIONS	
Administration of oaths	99. Every officer of a court has, for the purposes of any matter before him or her, power to administer oaths and affirmations and to examine parties and witnesses. R.S.O.1980,c.223,s.124.	SECTION 99  This section is derived from section 124 of the <u>Judicature Act</u> .	124. Every officer of the Supreme Court has, for the purposes of any proceeding before him, power to administer oaths and to examine parties and witnesses.		
	100. Money or property vested in or held by an officer of a court shall be deemed to be vested in the officer in trust for Her Majesty, subject to being disposed of in accordance with any statute, rule of court or order. R.S.O.1980,c.223,s.112.				
Disposition of court fees	101.--(1) All fees payable to a judge or salaried officer of a court in respect of a proceeding in the court shall be paid into the Consolidated Revenue Fund.	SECTION 101  Subsection (1) is derived from subsection 87(1) of the <u>Judicature Act</u> and subsection 10(1) of the <u>County Judges Act</u> .	87.-(1) Except where in this Act it is otherwise expressly provided, an officer who is paid by salary shall not take for his own benefit, directly or indirectly, any fee or emolument except the salary to which he is entitled and the fees payable in respect of proceedings in his office are payable to the Crown.		
Exception	(2) Subsection (1) does not apply to fees payable to court reporters under the regulations made under the <u>Administration of Justice Act</u> , R.S.O.1980,c.101,s.10; R.S.O.1980,c.223,s.87.	Subsection (2) is derived from subsection 87(2) of the <u>Judicature Act</u> . Clause 87(2)(a) has been deleted as unnecessary.	10.-(1) All fees payable by the parties to a proceeding before the judge, or upon an order or certificate made or given by him, shall form part of the Consolidated Revenue Fund, and, except as hereinafter provided, a judge of a county or district court is not entitled to receive any fees whatever under any Act of the Legislature.		
R.S.O.1980, c.6		<u>County Judges Act:</u>  10.-(1) All fees payable by the parties to a proceeding before the judge, or upon an order or certificate made or given by him, shall form part of the Consolidated Revenue Fund, and, except as hereinafter provided, a judge of a county or district court is not entitled to receive any fees whatever under any Act of the Legislature.			
		<u>Judicature Act:</u>  87(2) Subsection (1) does not apply to the fees of,  (a) a local registrar appointed before the 1st day of April, 1953, on an examination had before him as a special examiner or on a reference made to him as an official referee;  (b) a stenographic reporter for copies of shorthand notes of evidence, who is entitled to take the fees prescribed by order in council.			



DRAFT COURTS OF JUSTICE ACT

PART VII

COURT PROCEEDINGS

Application of Part  
102.-(1) This Part applies to civil proceedings in courts of Ontario.  
Application to criminal proceedings  
(2) Sections 116 (constitutional questions) and 126 (rendering decisions), section 128 and subsection 129(10) (language of proceedings) and sections 135 (judge sitting on appeal) and 139 (prohibition against photography at court hearing) also apply to proceedings under the Criminal Code (Canada), except in so far as they are inconsistent with that Act.  
R.S.C.1970, c.C-34  
(3) Sections 116 (constitutional questions), 128, 129 (language of proceedings), 135 (judge sitting on appeal) and 139 (prohibition against photography at court hearings) also apply to proceedings under the Provincial Offences Act and, for the purpose, a reference therein to a judge includes a justice of the peace presiding in the Provincial Offences Court. New.

R.S.O.1980. c.400

Application to provincial offences

Common Law and Equity

Rules of law and equity  
103.-(1) Courts shall administer concurrently all rules of equity and the common law.  
R.S.O.1980,c.223,s.18.

COMMENTS

SECTION 102

This section introduces Part VII of the Courts of Justice Act. The Part applies generally to all civil proceedings. Subsections (2) and (3) list provisions that are also applicable, respectively, to criminal proceedings and to proceedings under the Provincial Offences Act.

SECTION 103

This section revises the statutory provisions dealing with law and equity. It is similar in some respects to section 49 of the English Supreme Court Act 1981 (U.K.), 1981, c.54. The section is intended to simplify the old provisions dealing with law and equity.

Subsection (1) replaces paragraphs 1, 3, 4, 5 and 7 of section 18 of the Judicature Act. These paragraphs state that courts shall recognize all claims and defences, whether arising under the common law or equity, asserted by both plaintiffs and defendants. This is implicit in the statement that courts shall administer concurrently all rules of equity and the common law.

EXISTING PROVISIONS

18. In every civil cause or matter, law and equity shall be administered according to the following rules:

1. Where a plaintiff claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against a deed, instrument or contract, or against a right, title or claim asserted by a defendant in such cause or matter, or to any relief founded upon a legal right that before the commencement of The Ontario Judicature Act, 1881 could only have been given by a court of equity, the Supreme Court and every judge shall give to the plaintiff such and the same relief as ought to have been given by the Court of Chancery in a suit or proceeding for the same or the like purposes properly instituted before the commencement of that Act.

DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

3. Where a defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument or contract, or against any right, title or claim asserted by a plaintiff in such cause or matter, or alleges any ground of equitable defence to a claim of the plaintiff in such cause or matter, the court and every judge shall give to every equitable estate, right or ground of relief so claimed and to every ground of equitable defence so alleged, such and the same effect, by way of defence against the claim of such plaintiff, as the Court of Chancery ought to have given if the same or the like matters had been relied on by way of defence in a suit or proceeding instituted in that court for the same or the like purpose before the commencement of *The Ontario Judicature Act, 1881*.
4. The court and every judge also have power to grant to any defendant in respect of any equitable estate or right or other matter of equity, and also in respect of any legal estate, right or title claimed or asserted by him, all such relief against any plaintiff as such defendant has properly claimed by his pleading, and as the court or any judge might have granted in a suit instituted for that purpose by the same defendant against the same plaintiff, and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who has been duly served with notice in writing of such claim pursuant to the rules or to any order of the court, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose, and every person served with any such notice shall henceforth be considered a party to such cause or matter, with the same rights in respect of his defence against such claim as if he had been duly sued in the ordinary way by such defendant.
5. The court and every judge shall recognize and take notice of all equitable estates, titles and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the Court of Chancery would have recognized and taken notice of the same in any suit or proceeding duly instituted therein before the commencement of *The Ontario Judicature Act, 1881*.

DRAFT COURTS OF JUSTICE ACT		EXISTING PROVISIONS	
Rules of equity to prevail	(2) Where a rule of equity conflicts with a rule of the common law, the rule of equity prevails.	7. Subject to the foregoing provisions for giving effect to equitable rights and other matters of equity and the other express provisions of this Act, the court and every judge shall recognize and give effect to all legal claims and demands, and all estates, rights, duties, obligations and liabilities existing by the common law or created by any statute, in the same manner as they would have been recognized and given effect to before the commencement of <i>The Ontario Judicature Act, 1881</i> by any of the courts then existing and whose jurisdiction is now vested in the Supreme Court	
	(3) Unless otherwise provided, only the Supreme Court and the District Court may grant equitable relief. R.S.O.1980,c.223,ss.25,26.		
Jurisdiction for equitable relief	104. The Supreme Court and the District Court may make binding declarations of right whether or not any consequential relief is or could be claimed. R.S.O.1980,c.223,s.18,par.2.	25. In questions relating to the custody and education of minors and generally in all matters in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity prevail.	
Declaratory orders	105. A court may grant relief against penalties and forfeitures, on such terms as are considered just. R.S.O.1980,c.228,s.22.	26. Sections 18 to 25 are in force and have effect in all courts so far as the matters to which they relate are cognizable by such courts.	
Relief against penalties	106. A court that has jurisdiction to grant an injunction or order specific performance may award damages in addition to, or in substitution for, the injunction or specific performance. R.S.O.1980,c.223,s.21.	18 2. No action or proceeding is open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the court may make binding declarations of right, whether or not any consequential relief is or could be claimed	
Damages in lieu of injunction or specific performance		22. The court has power to relieve against all penalties and forfeitures, and, in granting such relief, to impose such terms as to costs, expenses, damages, compensation and all other matters, as are considered just.	
		21. Where the court has jurisdiction to entertain an application for an injunction against a breach of a covenant, contract or agreement, or against the commission or continuance of a wrongful act, or for the specific performance of a covenant, contract or agreement, the court may award damages to the party injured either in addition to or in substitution for the injunction or specific performance, and the damages may be ascertained in such manner as the court directs, or the court may grant such other relief as is considered just	
COMMENTS		Subsection (2) is derived from section 25 of the <u>Judicature Act.</u>	
		Subsection (3) is derived from section 26 of the <u>Judicature Act.</u>	
SECTION 104		This section is derived from paragraph 2 of section 18 of the <u>Judicature Act.</u>	
SECTION 105		This section is derived from section 22 of the <u>Judicature Act.</u>	
SECTION 106		This section is derived from section 21 of the <u>Judicature Act.</u>	



DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

Vesting orders

107. A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed. R.S.O.1980,c.223,s.79.

SECTION 107

This section is derived from section 79 of the Judicature Act.

79. Where the court has authority to direct the sale of any real or personal property or to order the execution of a deed, conveyance, transfer or assignment of any real or personal property, the court may by order vest the property in such person and in such manner and for such estates as would be done by any such deed, conveyance, assignment or transfer if executed; and the order has the same effect as if the legal or other estate or interest in the property had been actually conveyed by deed or otherwise, for the same estate or interest, to the person in whom the property is so ordered to be vested or, in the case of a chose in action, as if it had been actually assigned to the last-mentioned person.

Injunctions and receivers

Interlocutory Orders

108.--(1) In a proceeding in the Supreme Court or the District Court, an interlocutory injunction or mandatory order may be granted or a receiver may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms

(2) An order under subsection (1) may include such terms as are considered just. R.S.O.1980, c.223,s.19(1).

SECTION 108

This section is derived from subsection 19(1) of the Judicature Act. The concluding words of the existing subsection, dealing with waste and trespass, have been deleted as redundant. Injunctions are available to restrain any unlawful act.

19.--(1) A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the court in all cases in which it appears to the court to be just or convenient that the order should be made, and any such order may be made either unconditionally or upon such terms and conditions as the court considers just, and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, the injunction may be granted, whether the person against whom it is sought is or is not in possession under any claim of title or otherwise, or, if out of possession, does or does not claim a right to do the act sought to be restrained under a colour of title, and whether the estates claimed by both or by either of the parties are legal or equitable.

"labour dispute" defined

109.--(1) In this section, "labour dispute" means a dispute or difference concerning terms, tenure or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

SECTION 109

This section is derived from section 20 of the Judicature Act. Slight changes in language have been made to conform with the terminology of the new Act and Rules.

20.--(1) In this section, "labour dispute" means a dispute or difference concerning terms, tenure or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

Notice

(2) Subject to subsection (8), no injunction to restrain a person from an act in connection with a labour dispute shall be granted without notice.

(2) Subject to subsection (7), no injunction to restrain a person from any act in connection with a labour dispute shall be granted *ex parte*.

DRAFT COURTS OF JUSTICE ACT		COMMENTS	EXISTING PROVISIONS
Steps before injunction proceeding	<p>(3) In a motion or proceeding for an injunction to restrain a person from an act in connection with a labour dispute, the court must be satisfied that reasonable efforts to obtain police assistance, protection and action to prevent or remove alleged danger of damage to property, injury to persons, obstruction of or interference with lawful entry or exit from the premises in question or breach of the peace have been unsuccessful.</p>		<p>(3) In every application for an injunction to restrain a person from any act in connection with a labour dispute, the court must be satisfied that reasonable efforts to obtain police assistance, protection and action to prevent or remove any alleged danger of damage to property, injury to persons, obstruction of or interference with lawful entry upon or exit from the premises in question, or breach of the peace have been unsuccessful.</p>
Evidence	<p>(4) Subject to subsection (8), affidavit evidence in support of a motion for an injunction to restrain a person from an act in connection with a labour dispute shall be confined to statements of facts within the knowledge of the deponent, but any party may by notice to the party filing such affidavit, and payment of the proper attendance money, require the attendance of the deponent to be cross-examined at the hearing.</p>		<p>(4) Subject to subsection (7), evidence in support of an application for an injunction to restrain a person from any act in connection with a labour dispute shall be provided by way of affidavits confined to statements of facts within the knowledge of the deponent, but any party may by notice to the party filing such affidavit, together with the proper conduct money, require the attendance of the deponent to be cross-examined at the hearing of the motion.</p>
Interim injunction	<p>(5) An interim injunction to restrain a person from an act in connection with a labour dispute may be granted for a period of not longer than four days.</p>		<p>(5) An interim injunction to restrain a person from any act in connection with a labour dispute may be granted for a period of not longer than four days and, subject to subsection (7), only after two days notice of the application therefor has been given to the person or persons named in the application.</p>
Notice	<p>(6) Subject to subsection (8), at least two days notice of a motion for an interim injunction to restrain a person from any act in connection with a labour dispute shall be given to the responding party and to any other person affected thereby but not named in the notice of motion.</p>		

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COMMENTS

EXISTING PROVISIONS

Idem	<p>(7) Notice required by subsection (6) to persons other than the responding party may be given,</p> <p>(a) where such persons are members of a labour organization, by personal service on an officer or agent of the labour organization; and</p> <p>(b) where such persons are not members of a labour organization, by posting the notice in a conspicuous place at the location of the activity sought to be restrained where it can be read by any persons affected,</p> <p>and service and posting under this subsection shall be deemed to be sufficient notice to all such persons.</p>		<p>(6) At least two days notice of an application for an interim injunction to restrain a person from any act in connection with a labour dispute shall be given to the persons affected thereby and not named in the application,</p> <p>(a) where such persons are members of a labour organization, by personal service upon an officer or agent of the labour organization; and</p> <p>(b) where such persons are not members of a labour organization, by posting the notice in a conspicuous place at the location of the activity sought to be restrained where it can be read by any persons affected,</p> <p>and service and posting under this subsection shall be deemed to be sufficient notice to all such persons.</p>
Interim injunction without notice	<p>(8) Where notice as required by subsection (6) is not given, the court may grant an interim injunction where,</p> <p>(a) the case is otherwise a proper one for the granting of an interim injunction;</p> <p>(b) notice as required by subsection (6) could not be given because the delay necessary to do so would result in irreparable damage or injury, a breach of the peace or an interruption in an essential public service;</p> <p>(c) reasonable notification, by telephone or otherwise, has been given to the persons to be affected or, where any of such persons are members of a labour organization, to an officer of that labour organization or to the person authorized under section 87 of the Labour Relations Act to accept service of process under that Act on behalf of that labour organization or trade union, or where it is shown that such notice could not have been given; and</p> <p>(d) proof of all material facts for the purpose of clauses (a), (b) and (c) is established by oral evidence.</p>		<p>(7) Where notice as required by subsections (5) and (6) is not given, the court may grant an interim injunction where,</p> <p>(a) the case is otherwise a proper one for the granting of an interim injunction; and</p> <p>(b) notice as required by subsections (5) and (6) could not be given because the delay necessary to do so would result in irreparable damage or injury, a breach of the peace or an interruption in an essential public service; and</p> <p>(c) reasonable notification, by telephone or otherwise, has been given to the persons to be affected or, where any of such persons are members of a labour organization, to an officer of that labour organization or to the person authorized under section 87 of the Labour Relations Act, to accept service of process under that Act on behalf of that labour organization or trade union, or where it is shown that such notice could not have been given; and</p> <p>(d) proof of all material facts for the purposes of clauses (a), (b) and (c) is established by <i>viva voce</i> evidence.</p>



DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

Misrepresentation as contempt of court

(9) The misrepresentation of any fact or the withholding of any qualifying relevant matter, directly or indirectly, in a proceeding for an injunction under this section, constitutes a contempt of court.

(8) The misrepresentation of any fact or the withholding of any qualifying relevant matter, directly or indirectly provided by or on behalf of the applicant for an injunction under this section, constitutes a contempt of court.

Appeal

(10) An appeal from an order under this section may be taken without leave. R.S.O.1980,c.223,s.20.

Subsection (10) does not alter the general provisions concerning which courts hear appeals but, like subsection 20(9) of the Judicature Act, the new provision ensures that appeals may be taken without leave.

(9) Any judgment or order in an application under this section may be appealed to the Court of Appeal.

Certificate of pending litigation

110.-(1) The commencement of a proceeding in which an interest in land is in question is not notice of the proceeding to a person who is not a party until a certificate of pending litigation is issued by the court and the certificate is registered in the proper land registry office under subsection (2).

38.-(1) The institution of an action or the taking of a proceeding in which any title to or interest in land is brought in question shall not be deemed notice of the action or proceeding to any person not a party to it until, where the land is registered under the Land Titles Act, a caution is registered under that Act, or in other cases, until a certificate, signed by the proper officer of the court, has been registered in the land registry office of the registry division in which the land is situate.

Registration

(2) Where a certificate of pending litigation is issued under subsection (1) it may be registered whether the land is registered under the Land Titles Act or the Registry Act. R.S.O.1980,c.223,s.38(1).

Subsection (2) is a new provision intended to make clear that, when a certificate of pending litigation is issued in respect of land registered under the Land Titles Act, the certificate itself will be registered on title. It will no longer be necessary to obtain a caution from the land registrar.

R.S.O.1980, cc.230,445

Exception

(3) Subsections (1) and (2) do not apply to a proceeding for foreclosure or sale on a registered mortgage or to enforce a lien under the Construction Lien Act, 1983.

(3) Subsection (1) does not apply to an action or proceeding for foreclosure or sale upon a registered mortgage or to enforce a lien under the Mechanics' Lien Act.

1983,c.6

Liability for unsubstantiated claim

(4) A party who registers a certificate under subsection (2) without a reasonable claim to an interest in the land is liable for any damages sustained by any person as a result of its registration.

(4) Any person who registers a certificate or caution referred to in subsection (1) without a reasonable claim to title to or interest in the land is liable for any damages sustained by any person as a result of its registration.

DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

Recovery  
of damages

(5) The liability for damages under subsection (4) and the amount thereof may be determined in the proceeding in respect of which the certificate was registered or in a separate proceeding.  
R.S.O.1980,c.223,s.38(3-5).

Order vacating  
certificate

(6) The court may make an order discharging a certificate or vacating a caution,  
(a) where the party at whose instance it was issued,  
(i) claims a sum of money in place of or as an alternative to the interest in the land claimed,  
(ii) does not have a reasonable claim to the interest in the land claimed, or  
(iii) does not prosecute the proceeding with reasonable diligence;  
(b) where the interests of the party at whose instance it was issued are adequately protected by another form of security; or  
(c) on any other ground that is considered just,

and the court may, in making the order, impose such terms as to the giving of security or otherwise as the court considers just. R.S.O.1980,c.223,s.39(1-3).

Effect

(7) Where a certificate or caution is vacated, any person may deal with the land as fully as if the certificate or caution had not been registered.  
R.S.O.1980,c.223,s.39(6).

Application  
of section

(8) Subsections (4) and (5) apply in respect of a certificate or caution registered after the 24th day of November, 1977. R.S.O.1980,c.223,s.38(6).

(5) The liability for damages under subsection (4) and the amount thereof may be determined in an action commenced therefor in the court in which the certificate is issued or by application in the proceeding for an order to vacate the caution or certificate or in the action or proceeding in which the question of title to or interest in the land is determined.

39.—(1) Where a caution or certificate has been registered and the plaintiff or other party at whose instance it was issued does not in good faith prosecute the action or proceeding, a judge of the court in which the action or proceeding was commenced may at any time make an order vacating the caution or certificate.

(2) Where a caution or certificate has been registered and the plaintiff's claim is not solely to recover land or an estate or interest in land but to recover money or money's worth, chargeable on or payable out of land, or some estate or interest in it, or for the payment of which he claims that the land or such estate or interest ought to be subjected, or where the plaintiff claims land or some estate or interest in land, and, in the alternative, damages or compensation in money or money's worth, a judge of the court in which the action or proceeding was commenced may at any time make an order vacating the caution or certificate upon such terms as to giving security or otherwise as is considered just.

(3) A judge of the court in which the action or proceeding was commenced may at any time vacate the registration upon any other ground that is considered just.

(6) Where a caution or certificate is vacated, any person may deal in respect to the land as fully as if the caution or certificate had not been registered, and it is not incumbent on any purchaser or mortgagee to inquire as to the allegations in the action or proceeding, and his rights are not affected by his being aware of such allegations.

38(6) Subsections (4) and (5) do not apply in respect of cautions or certificates registered before the 25th day of November, 1977.

Subsection (6) is derived from subsections 39(1), (2) and (3) of the Judicature Act.

Subsection (7) is derived from subsection 39(6) of the Judicature Act.

Subsection (8) is derived from subsection 38(6) of the Judicature Act.



DRAFT COURTS OF JUSTICE ACT

Interim order for recovery of personal property

111.-(1) In an action in which the recovery of possession of personal property is claimed and it is alleged that the property,

(a) was unlawfully taken from the possession of the plaintiff; or

(b) is unlawfully detained by the defendant,

the court, on motion, may make an interim order for recovery of the property.

Damages

(2) A person who obtains possession of personal property by obtaining or setting aside an interim order under subsection (1) is liable for any loss suffered by the person ultimately found to be entitled to possession of the property. R.S.O. 1980, c. 449, s. 2.

"medical practitioner" defined

112.-(1) In this section, "medical practitioner" means a person licensed to practise medicine or dentistry in Ontario or any other jurisdiction.

Order for physical or mental examination

(2) Where the physical or mental condition of a party to a proceeding is in question, the court may require the party to submit to a physical or mental examination, or both, by one or more medical practitioners.

Idem

(3) Where the question of a party's physical or mental condition is first raised by another party, an order under subsection (2) shall not be made unless the allegation is relevant to a material issue in the proceeding and there is good reason to believe that there is substance to the allegation.

COMMENTS

SECTION 111

Subsection (1) is derived from section 2 of the Replevin Act.

Subsection (2) is a new provision making a person who obtains an interim order for possession of personal property liable for any loss suffered if it ultimately turns out that he or she was not entitled to the property.

SECTION 112

This section replaces the provisions of section 77 of the Judicature Act, which deal with medical examinations. Subsection (1) is derived from subsection 77(7) of the Judicature Act. It makes clear that examinations may be conducted by practitioners licensed outside Ontario.

Subsection (2) is derived from subsection 77(1) of the Judicature Act. The new provision is not limited to proceedings in respect of bodily injury.

Since the new provision is not limited to personal injury actions, subsection (3) has been included to protect a party whose physical or mental condition has been put in issue by another party.

EXISTING PROVISIONS

Replevin Act:

2. Where goods, chattels, deeds, bonds, debentures, promissory notes, bills of exchange, books of account, papers, writings, valuable securities or other personal property or effects have been wrongfully distrained or have been otherwise wrongfully taken or detained, the owner or other person capable of maintaining an action for damages therefor may bring an action of replevin for the recovery thereof and of the damages sustained by reason of the distraint, taking or detention.

Judicature Act:

77(7) In this section, "legally qualified medical practitioner" includes a person licensed to practise dentistry under Part II of the *Health Disciplines Act*.

77.-(1) In any action or proceeding for the recovery of damages or other compensation for or in respect of bodily injury sustained by any person, the court which, or the judge, or the person who by consent of parties, or otherwise, has power to fix the amount of the damages or compensation, may order that the person in respect of whose injury damages or compensation are sought submit himself to a physical examination by a legally qualified medical practitioner or by more than one legally qualified medical practitioners, but no medical practitioner who is a witness on either side shall be appointed to make the examination.



DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

Examiner may ask questions

(4) Where an order is made under subsection (2), the party examined shall answer the questions of the examining medical practitioner relevant to the examination and the answers given are admissible in evidence. R.S.O.1980,c.223,s.77.

Stay of proceedings

113. A court, on its own initiative or on motion by any person, whether or not a party, may stay any proceeding in the court on such terms as are considered just. R.S.O.1980,c.223,s.18,par.6.

(3) Subsection (4) is derived from subsections 77(2) and (3) of the Judicature Act.

SECTION 113

This section is derived from paragraph 6 of section 18 of the Judicature Act. It also replaces section 24 of the Judicature Act.

(2) Any legally qualified medical practitioner may in connection with an examination under subsection (1) ask the person being examined any questions that may be relevant to the purpose of the examination.

(3) Any answer given or statement made by a person being examined during an examination under subsection (1) that is relevant to the purpose of the examination is admissible in evidence.

18 6. No cause or proceeding shall be restrained by prohibition or injunction, but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, prior to *The Ontario Judicature Act, 1881*, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto, but nothing in this Act disables the court from directing a stay of proceedings in any cause or matter pending before it, and any person, whether or not a party to any such cause or matter, who would have been entitled, before the commencement of *The Ontario Judicature Act, 1881*, to apply to a court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, or order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, may apply to the court by motion in a summary way, for a stay of proceedings in such cause or matter either generally, or so far as may be necessary for the purposes of justice, and the court shall thereupon make such order as is considered just.

24. Where an action is brought in the Supreme Court for a cause of action for which a suit or action has been brought and is pending between the same parties or their representatives in any place or country out of Ontario, the court may make an order staying proceedings in the Supreme Court until satisfactory proof is offered to the court that the suit or action so brought in such other place or country out of Ontario is determined or discontinued.

DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

Consolidation,  
etc., of  
proceedings

114.-(1) Where two or more proceedings are pending in two or more different courts, and the proceedings,

- (a) have a question of law or fact in common;
- (b) claim relief arising out of the same transaction or occurrence or series of transactions or occurrences; or
- (c) for any other reason ought to be the subject of an order under this section, an order may, on motion, be made,

- (d) transferring any of the proceedings to another court and requiring the proceedings to be consolidated, or to be heard at the same time, or one immediately after the other; or

- (e) requiring any of them to be stayed until after the determination of any other of them, on such terms as are considered just.

Transfer from  
small claims  
court

(2) A proceeding shall not be transferred under clause (1)(d) from a small claims court or the Provincial Court (Civil Division) to the District Court or the Supreme Court without the consent of the parties to the proceeding.

Motions

(3) The motion shall be made,

- (a) where one or more of the proceedings are in the Supreme Court, to a judge of the Supreme Court;
- (b) where none of the proceedings are in the Supreme Court, to a judge of the District Court.

Directions

(4) An order under clause (1)(d) may give such directions as are considered just to avoid unnecessary costs or delay, and for that purpose the court may dispense with service of a notice of trial and abridge the time for placing an action on the trial list.

SECTION 114

This is a new provision that deals with the consolidation of two or more proceedings that are pending in two or more different courts. It is similar to a provision in the new Rules that deals with the consolidation of two or more proceedings that are pending in the same court. These provisions could be used, for example, when a single incident results in a number of separate court proceedings in different courts. Since many of the issues will be the same in all the proceedings, it may be convenient to consolidate the proceedings.

DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

Transfer

(5) A proceeding that is transferred to another court under clause (1)(d) shall be titled in the court to which it is transferred and shall be continued as if it had been commenced in that court.

Discretion at hearing

(6) Where an order has been made that proceedings be heard either at the same time or one immediately after the other, the judge presiding at the hearing nevertheless has discretion to order otherwise. New.

Jury trials

Procedural Matters

115.-(1) Actions in the Supreme Court and the District Court may be tried with a jury, except as provided otherwise.

Trials without jury

(2) Actions in which a claim is made for any of the following kinds of relief shall be heard without a jury:

- (a) an injunction or mandatory order;
- (b) partition or sale of real property;
- (c) custody or guardianship of a minor or management of the estate of a minor;
- (d) dissolution of a partnership or taking of partnership or other accounts;
- (e) foreclosure or redemption of a mortgage;
- (f) sale and distribution of the proceeds of property subject to any lien or charge;
- (g) execution of a trust;
- (h) rectification, setting aside or cancellation of a deed or other written instrument;
- (i) specific performance of a contract;
- (j) declaratory relief;
- (k) any other equitable relief;
- (l) any relief against a municipality.

SECTION 115

Subsection (1) replaces section 59 of the Judicature Act. It states the general principle that most actions in the Supreme and District Courts may be tried with a jury. The new Act does not make jury trials mandatory for actions of libel, slander, malicious arrest, malicious prosecution and false imprisonment. Like other actions, these actions may be tried with a jury if a jury notice is served under the new Rules.

Subsection (2) is derived mainly from subsection 60(4) of the Judicature Act. The new subsection attempts to list more specifically the actions that cannot be tried with a jury. Clause (2)(1) replaces section 58 of the Judicature Act. The new clause prohibits jury trials against municipalities, in the same way that section 15 of the Proceedings Against the Crown Act prohibits jury trials against the provincial government.

59.-(1) Subject to the rules and except where otherwise expressly provided by this Act, all issues of fact shall be tried and all damages shall be assessed by the judge without the intervention of a jury.

(2) The judge may nevertheless direct that the issues or any of them be tried and the damages be assessed by a jury.

60(4) Subsection (1) does not apply to causes, matters or issues over the subject of which the Court of Chancery had exclusive jurisdiction before the commencement of *The Administration of Justice Act of 1873*.

58. Actions against a municipal corporation or a board of trustees of a police village for damages in respect of injuries sustained by reason of the default of the corporation in keeping in repair a highway or bridge shall be tried by a judge without the intervention of a jury, and the trial shall take place in the county that constitutes the municipality or in which the municipality or police village is situate.



DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

Idem

(3) On motion, a judge may order that any action be tried without a jury. R.S.O.1980,c.223, ss.57,59(1).

Composition of jury  
R.S.O.1980, c.226

(4) Where a proceeding is tried with a jury, the jury shall be composed of six persons selected in accordance with the Juries Act. New.

Verdicts or questions

(5) Where a proceeding is tried with a jury,  
(a) the judge may, except in actions of libel, require the jury to give a general verdict or to answer specific questions; and

Idem

(b) judgment may be entered in accordance with the verdict or the answers to the questions. R.S.O.1980,c.223,ss.64,65 (1,3).

(6) It is sufficient if five of the jurors agree on the verdict or the answer to a question, and where more than one question is submitted, it is not necessary that the same five jurors agree to every answer. R.S.O.1980,c.223,s.62.

Discharge of juror at trial

(7) The judge presiding at a trial may discharge a juror on the ground of illness, hardship, partiality or other sufficient cause.

Continuation of trial with five jurors

(8) Where a juror dies or is discharged, the judge may direct that the trial proceed with five jurors, in which case the verdict or answers to questions must be unanimous. R.S.O.1980,c.223, s.63.

Subsection (3) makes clear that a judge may order that an action be tried without a jury.

Subsection (4) is a new provision intended to serve as a bridge between subsections (2) and (3), which deal with the circumstances in which proceedings are tried without a jury, and the remaining provisions of the section, which deal with proceedings tried with a jury.

Clause (5)(a) is derived from section 64 and subsection 65(1) of the Judicature Act. There appears to be no difference between a special verdict and the giving of answers to specific questions. Therefore, the new provision does not mention special verdicts. At common law, a jury could give a general verdict even if the judge requested a special verdict. The new provision, like subsection 64(1) of the Judicature Act, permits the judge to require answers to specific questions. Section 15 of the Libel and Slander Act permits a jury to give a general verdict notwithstanding that the judge addressed specific questions to them. This specific provision will continue to prevail over the provisions of clause 115(5)(a) of the Courts of Justice Act.

Clause (5)(b) is derived from subsection 65(3) of the Judicature Act.

Subsection (6) is derived from section 62 of the Judicature Act.

Subsections (7) and (8) are derived from section 63 of the Judicature Act.

64.—(1) In the absence of a direction to the contrary of the judge, a jury may give a general or special verdict, but shall give a special verdict if he so directs and shall not give a general verdict if directed by him not to do so

(2) This section does not apply to actions of libel

65.—(1) Upon a trial by jury, except in an action of libel, the judge, instead of directing the jury to give either a general or a special verdict, may direct the jury to answer any questions of fact stated to them by him, and the jury shall answer such questions, and shall not give any verdict.

(3) Judgment may be directed to be entered on the answers to such questions.

62.—(1) It is sufficient if five of the jurors agree, and a verdict rendered or question answered by five jurors has the same effect as a verdict or answer given by six jurors.

(2) Where more questions than one are submitted, it is not necessary that the same five jurors agree to every answer

63. If at the trial of an action or issue or assessment of damages a juror dies or becomes incapacitated from any cause from continuing to sit or act on the jury, or if it is discovered that a juror has an interest in the result of the proceeding, or is a relative within the degree of first cousin of any of the parties, the judge may discharge him and direct that the trial or assessment proceed on such terms as he considers just with five jurors, and in that case the verdict or answer to a question given by the jury shall be unanimous.

DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

Specifying negligent acts under R.S.O.1980, c.198, s.167(1)

(9) Where a proceeding to which subsection 167(1) of the Highway Traffic Act applies is tried with a jury, the judge may direct the jury to specify negligent acts or omissions that caused the damages or injuries in respect of which the proceeding is brought. R.S.O.1980, c.223, s.65(2).

Malicious prosecution

(10) In an action for malicious prosecution, the trier of fact shall determine whether or not there was reasonable and probable cause for instituting the prosecution. R.S.O.1980, c.223, s.66.

Constitutional questions

116.-(1) Where the constitutional validity or constitutional applicability of an Act of the Parliament of Canada or the Legislature or of a regulation or by-law made thereunder is in question, the Act, regulation or by-law shall not be adjudged to be invalid or inapplicable unless notice has been served on the Attorney General of Canada and the Attorney General of Ontario in accordance with subsection (2).

Form and time of notice

(2) The notice shall be in the form provided for by the Rules of Civil Procedure and, unless the court orders otherwise, shall be served at least ten days before the day on which the question is to be argued.

Notice of appeal

(3) Where the Attorney General of Canada and the Attorney General of Ontario are entitled to notice under subsection (1), they are entitled to notice of any appeal in respect of the constitutional question.

Subsection (9) is derived from subsection 65(2) of the Judicature Act. This provision is necessary to overrule the decision of the Supreme Court of Canada in Beach v. Healey, [1943] S.C.R. 272.

Subsection (10) replaces section 66 of the Judicature Act. The new provision alters the law, as recommended by the Uniform Law Conference of Canada in section 187 of the Uniform Evidence Act, so that the trier of fact determines whether there was reasonable and probable cause for instituting the prosecution.

SECTION 116

Subsection (1) is derived from subsection 35(1) of the Judicature Act. The new provision requires notice whenever the constitutional applicability of a statute is questioned, as well as the constitutional validity of a statute.

Subsection (2) replaces subsections 35(2) and (3) of the Judicature Act. The Rules of Civil Procedure will provide a form for the notice which will give more detail concerning the content of the notice. The new subsection also extends the period of notice from six days to ten days, subject to the court permitting a different period.

Subsection (3) is a new provision intended to make clear that the Attorney General of Canada and the Attorney General of Ontario are entitled to notice of any appeal in respect of a constitutional issue.

65(2) In an action, tried by a judge and jury, to which subsection 167 (1) of the Highway Traffic Act applies, the judge may direct the jury to specify negligent acts or omissions that caused the damages or injuries in respect of which the action is brought.

66. In actions of malicious prosecution, the judge shall decide all questions both of law and fact necessary for determining whether or not there was reasonable and probable cause for the prosecution.

85.-(1) Where in an action or other proceeding the constitutional validity of any Act or enactment of the Parliament of Canada or of the Legislature is brought in question, it shall not be adjudged to be invalid until after notice has been given to the Attorney General for Canada and to the Attorney General for Ontario.

(2) The notice shall state what Act or part of an Act is in question and the day on which the question is to be argued, and shall give such other particulars as are necessary to show the constitutional point proposed to be argued.

(3) Subject to the rules, the notice shall be served six days before the day named for the argument.



DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

Right of  
Attorneys  
General to  
be heard

(4) Where the Attorney General of Canada or the Attorney General of Ontario is entitled to notice under this section, he or she is entitled to adduce evidence and make submissions to the court in respect of the constitutional question.

Right of  
Attorneys  
General to  
appeal

(5) Where the Attorney General of Canada or the Attorney General of Ontario makes submissions under subsection (4), he or she shall be deemed to be a party to the proceedings for the purpose of any appeal in respect of the constitutional question.  
R.S.O.1980,c.223,s.35.

Proceeding  
in wrong forum

117.-(1) Where a proceeding or a step in a

proceeding is brought or taken before the wrong court, judge or officer, it may be transferred or adjourned to the proper court, judge or officer.

Continuation  
of proceeding

(2) A proceeding that is transferred to another court under subsection (1) shall be titled in the court to which it is transferred and shall be continued as if it had been commenced in that court. New.

Subsection (4) is derived from subsection 35(4) of the Judicature Act.

Subsection (5) is derived from subsection 35(5) of the Judicature Act.

SECTION 117

This is a new provision that permits a proceeding, or a step in a proceeding, brought or taken before the wrong court, judge or officer, to be transferred or adjourned to the proper court, judge or officer. Without this provision, a person who mistakenly chooses the wrong forum may find that he has missed a time period and is too late to start again. The new section replaces section 17 of the County Courts Act.

County Courts Act:

17. Where it appears in an action brought in a county or district court that such court has not cognizance thereof, but that the court of some other county or district has jurisdiction to try it, the judge before whom it is pending may, at any time before or during the trial thereof, order it to be transferred to such other county or district court upon such terms as to costs and otherwise as he considers just.



DRAFT COURTS OF JUSTICE ACT		COMMENTS		EXISTING PROVISIONS	
Set off	118.--(1) In an action for payment of a debt, the defendant may, by way of defence, claim the right to set against the plaintiff's claim a debt owed by the plaintiff to the defendant. R.S.O.1980,c.223, s.134.	SECTION 118  Subsection (1) is derived from section 134 of the Judicature Act. The new provision is intended to make clear that the set off is claimed by way of defence, not by way of counterclaim.		Judicature Act:  134. Where there are mutual debts between the plaintiff and defendant or, if either party sue or be sued as executor or administrator, where there are mutual debts between the testator or intestate and either party, one debt may be set against the other.	
Idem	(2) Mutual debts may be set against each other, notwithstanding that they are of a different nature or that one debt is owed to or by a person in a personal capacity and the other debt is owed by or to the person in a capacity other than personal. R.S.O.1980,c.223,s.135(1).	Subsection (2) is derived from subsection 135(1) of the Judicature Act. It also provides that a set off may be claimed in respect of debts that are owed in different capacities, a matter that is dealt with in part by section 134 of the Judicature Act.  The language in subsection 135(1) of the Judicature Act dealing with penalties, as well as subsection 135(2), has been deleted as unnecessary. Penalties are unenforceable because of the law of equity, not because of section 135.		135.—(1) Mutual debts may be set against each other notwithstanding that such debts are deemed in law to be of a different nature, except where either of the debts accrue by reason of a penalty contained in any bond or specialty.  (2) Where either the debt for which the action is brought or the debt intended to be set against the same has accrued by reason of any such penalty, the debt intended to be set off shall be pleaded and it shall be shown by the pleading how much is truly and justly due on either side, and if the plaintiff recovers in any such action, judgment shall be entered for no more than appears to be truly and justly due to the plaintiff after one debt is set against the other.	
Judgment for defendant	(3) Where, on a defence of set off, a larger sum is found to be due from the plaintiff to the defendant than is found to be due from the defendant to the plaintiff, the defendant is entitled to judgment for the balance. R.S.O.1980, c.223,s.136.	Subsection (3) is derived from section 136 of the Judicature Act.		136. If, upon a defence of set off, a larger sum found to be due from the plaintiff to the defendant than is found to be due from the defendant to the plaintiff, the defendant is entitled to judgment for the balance remaining due to him.	

DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

Report of  
Official  
Guardian in  
divorce action

119.-(1) Where a petition or counter-petition for divorce contains particulars of a child of the marriage within the meaning of section 2 of the Divorce Act (Canada), the Official Guardian shall cause an investigation to be made and shall report to the court on all matters relating to the custody, maintenance and education of the child.

R.S.C. 1970,  
c.D-8

SECTION 119

Subsection (1) is derived from subsections 1(1) and (2) of the Matrimonial Causes Act. The new provision does not require an investigation in nullity proceedings. Nullity actions are very rare and, when they do occur, do not very often involve children. In the event that a nullity action does involve children, it will still be possible to obtain an Official Guardian's report under section 32 of the Children's Law Reform Act.

Matrimonial Causes Act:

1.—(1) In this section, "child of the marriage" and "child" include a child adopted under Part III of the *Child Welfare Act*, or a predecessor thereof, by the parties to the action but do not include a child of the marriage of the parties who has been adopted by another person under Part III of the *Child Welfare Act* or a predecessor thereof.

(2) Where a petition or counter-petition for divorce or the statement of claim in an action for the annulment of a marriage contains particulars of any child of the marriage who, at the time of the commencement of the action,

(a) is under sixteen years of age; or

(b) is sixteen or seventeen years of age and is in full-time attendance at an educational institution or through illness or infirmity is unable to earn a livelihood,

the Official Guardian shall cause an investigation to be made and shall report to the court upon all matters relating to the custody, maintenance and education of the child.

Agents

(2) The Official Guardian may engage another person to make the investigation.

Report  
admissible  
in evidence

(3) An affidavit of the person making the investigation, verifying the report as to facts that are within the person's knowledge and setting out the source of the person's information and belief as to other facts, with the report attached as an exhibit thereto, is admissible in evidence at the hearing of the divorce proceeding.

Attendance  
on report

(4) Where a party to the proceeding disputes the facts set out in the report, the Official Guardian shall if directed by the court, and may when not so directed, attend the hearing on behalf of the child and where the Official Guardian attends, he or she may call as a witness the person who made the investigation.

Subsections (2) and (3) are derived from subsections 1(3) and (4) of the Matrimonial Causes Act.

Subsection (4) is derived from subsection 1(5) of the Matrimonial Causes Act.

(5) Where the facts contained in the report are disputed, the Official Guardian or his agent shall if directed by the court, and may when not so directed, attend the trial on behalf of the child and cause the person making the investigation to attend as a witness.

DRAFT COURTS OF JUSTICE ACT		COMMENTS	EXISTING PROVISIONS
Payment of fees	(5) The petitioner shall pay such fees for and disbursements arising from an investigation in respect of the petition as are prescribed under the <u>Administration of Justice Act</u> .	Subsections (5) and (6) are derived from subsections 1(6) and (7) of the <u>Matrimonial Causes Act</u> .	(6) The petitioner in a petition for divorce or the plaintiff in an action for annulment shall pay such fees for and disbursements arising from an investigation in respect of the petition or action as are prescribed under the <i>Administration of Justice Act</i> .
R.S.O.1980, c.6			
Idem	(6) The Official Guardian shall not serve or file the report of the investigation until the fees and disbursements have been paid, unless the court orders otherwise. R.S.O.1980,c.258,s.1(2-7).		(7) The Official Guardian shall not file his report of the investigation with the court until such fees and disbursements have been paid unless otherwise directed by the court.
Costs of Official Guardian	(7) The fees and disbursements of the Official Guardian payable under subsection (5) shall be deemed to be costs incurred in the proceeding for the purposes of any order for costs. R.S.O.1980, c.258,s.1(9).	Subsection (7) is derived from subsection 1(9) of the <u>Matrimonial Causes Act</u> .	(9) The fees and disbursements of the Official Guardian payable under subsection (6) shall be deemed to be costs incurred in the action for the purposes of any award as to costs by the judge.
Agreement preventing third party claim	120. Rules of court permitting a defendant to make a third party claim apply notwithstanding any agreement that provides that no action may be brought until after judgment against the defendant. <u>New.</u>	<p>SECTION 120</p> <p>This is a new provision intended to implement a recommendation of the Morden Subcommittee. They recommended that a defendant should be permitted to make a third party claim against his insurer, notwithstanding that the contract of insurance contains a "no action" clause that prevents the defendant from taking action against his insurer until judgment is obtained against the defendant. Without this provision, a defendant must suffer judgment and expose his property to execution before an action can even be commenced against the insurer based on the insurer's contractual liability to indemnify the defendant.</p> <p>SECTION 121</p> <p>This section is derived from section 61 of the Judicature Act. The new section states that, although an agreement as to the place of hearing is not binding if a motion to change the place of hearing is made, the agreement may be taken into account on the motion.</p>	
Agreement as to place of hearing	121. Where a party moves to change the place of hearing in a proceeding, an agreement as to the place of hearing is not binding, but may be taken into account. R.S.O.1980,c.223,s.61.		<p><u>Judicature Act:</u></p> <p>§ 1.—(1) Subject to subsection (2), no proviso, condition, stipulation, agreement or statement that provides for the place of trial of an action, matter or other proceeding is of any force or effect.</p> <p>(2) Subsection (1) does not apply unless and until the defendant moves to change the place of trial.</p>



DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

Security

122. Where a person is required to give security in respect of any proceeding in a court, a bond of a guarantee company to which the Guarantee Companies Securities Act applies is sufficient, unless the court orders otherwise. New.

R.S.O.1980, c.192

SECTION 122

This section replaces section 76 of the Judicature Act. The regulations under the Guarantee Companies Securities Act list the companies that are permitted to give security in court proceedings.

76.—(1) In this section, “surety company” means a corporation empowered to give bonds by way of indemnity.

(2) The Lieutenant Governor in Council may direct that the bond of a surety company named in the order in council may be given as security in all cases where security is ordered to be given by any court or by any judge or officer of any court and in all cases where security for the cost of an appeal or for the prosecution of the appeal is required by any law, rule or practice.

(3) Every order in council made under subsection (2) shall be published forthwith in *The Ontario Gazette* and shall be laid before the Assembly within fifteen days after its making if the Assembly is then in session and, if it is not in session, within fifteen days after the opening of the next session.

(4) The bond of a surety company named in the order in council is sufficient without any other surety joining in the bond, and an affidavit of justification is not necessary.

(5) Notwithstanding anything in this section, any judge or any officer having jurisdiction in the matter may in his discretion disallow any such bond on a motion to disallow it, and upon any evidence that is considered sufficient.

Periodic payment and review of damages

123. In a proceeding where damages are claimed,  
(a) for personal injuries; or  
(b) under Part V of the Family Law Reform Act, for loss resulting from the injury to or death of a person,  
the court may, with the consent of all affected parties,

R.S.O.1980, c.152

SECTION 123

This section is intended to implement two of the recommendations of the Bench and Bar Council's Committee on Tort Compensation. It will provide a statutory basis for orders that damages for injuries or death be paid periodically or be reviewed and revised. This section only applies if the consent of the affected parties is obtained. This section does not implement the Tort Compensation Committee's recommendation that, without consent, the court be permitted to order a defendant to pay any part of a judgment sum representing the cost of future care of an injured plaintiff to a person approved by the court. If a plaintiff is competent, he should be entitled to manage his own money. If he is not competent, the Mental Incompetency Act provides for the appointment of a committee who may handle his property.

- (c) order the defendant to pay all or part of the award for damages periodically on such terms as the court considers just;
- (d) order that the award for damages be subject to future review and revision in such circumstances and on such terms as the court considers just. New.

DRAFT COURTS OF JUSTICE ACT		COMMENTS	EXISTING PROVISIONS
Assessment of damages	<p>124. Where damages are to be assessed in respect of,</p> <p>(a) a continuing cause of action;</p> <p>(b) repeated breaches of a recurring obligation; or</p> <p>(c) intermittent breaches of a continuing obligation,</p> <p>the damages, including damages for breaches occurring after the commencement of the proceeding, shall be assessed down to the time of the assessment. <u>New.</u></p>	<p>SECTION 124</p> <p>This section is derived from existing rule 259, which will not appear in the new Rules.</p>	<p><u>Rules of Practice:</u></p> <p>259. Damages in respect of any continuing cause of action shall be assessed down to the time of the assessment.</p>
Actions for accounting	<p>125.-(1) Where an action for an accounting could have been brought against a person, the action may be brought against his or her personal representative.</p> <p>(2) An action for an accounting may be brought by a joint tenant or tenant in common, or his or her personal representative, against a co-tenant for receiving more than the co-tenant's just share.</p> <p>R.S.O.1980,c.223,s.139.</p>	<p>SECTION 125</p> <p>This section is derived from section 139 of the <u>Judicature Act</u>.</p>	<p><u>Judicature Act:</u></p> <p>139. Actions of account may be brought and maintained against the executors or administrators of a guardian, bailiff or receiver, and also by one joint tenant or tenant in common, his executors or administrators, against the other as bailiff for receiving more than comes to his just share or proportion, and against the executor or administrator of such joint tenant or tenant in common.</p>
Idem			
Interpretation	<p>126.-(1) In this section,</p> <p>(a) "chief judge" means the person having authority to assign duties to the judge;</p> <p>(b) "judge" includes a local judge or master.</p>	<p>SECTION 126</p> <p>This section deals with the giving of decisions by a judge who retires or resigns and with the situation where a rehearing is required. Subsection (1) defines the persons to whom the section applies.</p>	

DRAFT COURTS OF JUSTICE ACT

Inability  
to render  
decision

(2) A judge may, within ninety days of,

- (a) reaching retirement age;
- (b) resigning; or
- (c) being appointed to another court,

give a decision or participate in the giving of a decision in any matter previously tried or heard before the judge.

COMMENTS

Subsection (2) is derived from subsections 11(1), 11(2) and 42(5) of the Judicature Act, section 19 of the County Judges Act and section 13 of the Unified Family Court Act. The time in which the decision can be given has been extended from eight weeks to ninety days.

EXISTING PROVISIONS

11.—(1) Where a judge resigns his office or is appointed to any other court or ceases to hold office by reason of his having reached the age of retirement, he may at any time within eight weeks after such event, give judgment in any cause, action or matter previously tried or heard before him, as if he had not so resigned, been appointed, elected or ceased to hold office.

(2) Where he has heard a cause, action or matter jointly with other judges in the Court of Appeal or Divisional Court, he may at any time within the period mentioned in subsection (1) take part in the giving of judgment by that court as if he were still a member of it.

42(5) A judge who has sat in the Court of Appeal on the hearing of any appeal, matter or proceeding therein may give judgment notwithstanding that he has ceased to be a judge of that court.

County Judges Act:

19. Where a judge resigns his office or is appointed to any other court or elects to hold office only as a supernumerary judge or ceases to hold office by reason of his having reached the age of retirement, he may at any time within eight weeks after such event give judgment in any cause, action or matter previously tried by or heard before him, as if he had continued in office.

Unified Family Court Act:

13. Where a Judge ceases to hold office, he may within eight weeks give judgment or make an order or decision in a proceeding previously heard by him as if he had continued in office.

Decision of  
remaining  
judges

(3) Where a judge has commenced a hearing together with other judges and,

- (a) dies before the decision is given;
- (b) is for any reason unable to participate in the giving of the decision; or
- (c) does not participate in the giving of the decision under subsection (2),

the remaining judges may complete the hearing and give the decision of the court but, if the remaining judges are equally divided, a party to the proceeding may make a motion to the chief judge for an order that the motion or proceeding be reheard. R.S.O.1980,c.223,s.11(1-3).

Subsection (3) is derived from subsection 11(3) of the Judicature Act. It also permits a rehearing if the remaining judges are equally divided.

Judicature Act:

(3) Where he does not take part in the giving of judgment or where a judge by whom a cause, action or matter has been heard in the Court of Appeal or Divisional Court is absent from illness or any other cause or dies, the remaining judges of the court, or, if there is a difference of opinion, a majority of them, may give judgment as if the judge who has so resigned or been appointed or is dead were still a member of the court and taking part in the judgment, and, in the case of absence, as if the absent judge were present and taking part in the judgment.



DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

County Courts Act:  
30.—(1) Where the judge before whom an action is tried, either with or without a jury, dies before giving judgment, or having reserved his judgment after having heard the evidence does not deliver judgment within six months thereafter, any party may, upon notice to all other parties, apply to the chief judge for an order directing that the action be reheard by such judge of a county or district court as he designates

Subsection (4) is derived from subsection 30(1) of the County Courts Act. The new provision extends to judges of all courts, not just District Court judges.

Subsections (5) and (6) are intended to deal with delayed decisions.

(4) Where a judge has commenced hearing a motion, reference or proceeding sitting alone and,  
(a) dies without giving a decision;  
(b) is for any reason unable to make a decision; or  
(c) does not give a decision under subsection (2),  
a party to the motion, reference or proceeding may make a motion to the chief judge for an order that the motion, reference or proceeding be reheard.

R.S.O. 1980, c. 100, s. 30(1).

(5) Where a judge has heard a motion, reference or proceeding and fails to give a decision.

(a) in the case of judgment, within six months; or  
(b) in any other case, within three months,  
the chief judge may extend the time in which the decision may be given and, if necessary, relieve the judge of his or her other duties until the decision is given.

(b) Where time has been extended under subsection (5) but the judge fails to give the decision within that time, unless the chief judge grants a further extension,

(a) the chief judge shall report the failure and the surrounding circumstances to the appropriate judicial council; and  
(b) a party to the motion, reference or proceeding may make a motion to the chief judge for an order that the motion, reference or proceeding be reheard.

Extension of time

Decision

DRAFT COURTS OF JUSTICE ACT		COMMENTS		EXISTING PROVISIONS	
Rehearing	(7) Where an order is made under subsection (3), (4) or (6) for the rehearing of a motion, reference or proceeding, the chief judge may,  (a) dispose of the costs of the original motion, reference or proceeding or refer the question of those costs to the judge or judges presiding at the rehearing;  (b) direct that the rehearing be conducted on the transcript of evidence taken at the original hearing, subject to the discretion of the judge presiding at the rehearing to recall a witness or require further evidence; and  (c) give such other directions as are considered just. <u>New.</u>	Subsection (7) is derived from subsections 30(2) to (6) of the <u>County Courts Act</u> .		30(2) An order made under subsection (1) shall name the place where the action shall be set down and reheard, and in making such order the chief judge may give such other directions as he considers fit.  (3) No further evidence shall be received upon such rehearing unless by leave of the court.  (4) No proceedings in the action shall thereafter be taken in the county court without the order of the chief judge after notice  (5) Upon such rehearing, the evidence, exhibits and papers used at the trial shall be read and after argument by counsel the presiding judge shall deal with the action as on an original trial and shall direct that judgment be entered by the county court clerk in accordance with his findings  (6) The costs of the rehearing shall be fixed by the judge presiding at the rehearing, who shall also direct by whom they are to be paid.	
Service on Sunday	127. Except in cases of urgency, no document shall be served and no order shall be executed on Sunday. R.S.O.1980,c.223,s.132.	SECTION 127  This section is derived from section 132 of the <u>Judicature Act</u> . The new provision permits documents to be served on Sunday in cases of urgency. For example, there may be occasions where an urgent motion for an interim injunction must be made to stop an activity that is planned to take place on a Sunday. If the order is not obtained until late Saturday, it should still be possible to serve the order on Sunday. The new section also implements the Ontario Law Reform Commission recommendation that "the Lord's Day" be replaced by "Sunday": Report on Sunday Observance Legislation (1970), p. 367.		Judicature Act:  132. No person upon the Lord's Day shall serve or execute, or cause to be served or executed, any writ or process, warrant, order or judgment, except in cases of treason, felony, or breach of the peace, and the service of every such writ, process, warrant, order or judgment on the Lord's Day is void, and the person so serving or executing it is as liable to the suit of the party grieved and to answer damages to him for doing thereof, as if he had done the same without any writ, process, warrant or order or judgment	
Proceedings in English language	128. Except as otherwise provided,  (a) hearings in courts shall be conducted in the English language and evidence adduced in a language other than English shall be interpreted into the English language; and  (b) documents filed in courts shall be in the English language or shall be accompanied by a translation of the document into the English language. R.S.O. 1980,c.223,s.130(1).	SECTION 128  This section is derived from subsection 130(1) of the <u>Judicature Act</u> . The section is intended to state more clearly the existing practice of the courts. For example, documentary evidence that is not in the English language may be filed if it is accompanied by a translation of the document into the English language.  The following section creates a significant exception from the general principle that proceedings are conducted in the English language.		130.—(1) Subject to subsections (2) to (9), writs, pleadings and proceedings in all courts shall be in the English language only, but the proper or known names of writs or other process, or technical words, may be in the same language as has been commonly used	

DRAFT COURTS OF JUSTICE ACT		COMMENTS	EXISTING PROVISIONS
"designated court" defined	129.--(1) In this section, "designated court" means,  (a) a court sitting in,  (i) the county of Essex or Renfrew,  (ii) the judicial district of Niagara South, Ottawa-Carleton or York,  (iii) the territorial district of Algoma, Cochrane, Nipissing, Sudbury or Timiskaming,  (iv) the united counties of Prescott and Russell or the united counties of Stormont, Dundas and Glengarry;  (b) a court designated by order of the Lieutenant Governor in Council, sitting in a place that is not in a county or district mentioned in clause (a) and is designated in the order. R.S.O.1980, c.223,s.130(2.3); 1983,c.3,s.1(1).	SECTION 129  This section replaces subsections 130(2) to (8) of the Judicature Act. Subsection (1) is derived from subsections 130(2) and (3) of the existing Act. The new provision specifically names the counties and districts that have been designated under clause 130(3)(a) of the existing Act.	(2) The Regional Municipality of Ottawa-Carleton, the United Counties of Prescott and Russell, the United Counties of Stormont, Dundas and Glengarry and the Territorial Districts of Algoma, Cochrane, Nipissing, Sudbury and Timiskaming and such additional counties and districts as are designated by the Lieutenant Governor in Council under subsection (3) are designated counties and districts for the purposes of this section.  (3) The Lieutenant Governor in Council may designate,  (a) counties and districts in addition to those named in subsection (2);  (b) courts in a designated county or district; and  (c) courts sitting in any designated place, for the purposes of this section.
Non-jury trial before bilingual judge	(2) In a proceeding in a designated court that is to be heard without a jury, a party who speaks the French language has the right to require that the hearing be conducted before a judge who speaks both the English and French languages.	Subsection 130(4) of the existing Act has been split into two subsections. Subsection (2) deals with non-jury trials and subsection (3) deals with jury trials. Subsection (2) states that a party to a non-jury trial in a designated court who speaks the French language has the right to require that the hearing be conducted before a judge who speaks both the English and French languages. Subsection (3) states that a party to a jury trial who speaks the French language has the right to require the hearing to be conducted before a judge and jury who speak both the English and French languages in designated courts in counties and districts referred to in clause (1)(a). Bilingual jury trials are not possible in other counties or districts (i.e., those designated under subclause (1)(b)), because the number of bilingual persons in those areas is not large enough to prepare a bilingual jury roll of sufficient size.	(4) In a proceeding in a designated court, or in any court to which an appeal therefrom is made, the court shall, upon the application of a party who speaks the French language, direct that the hearing in the proceeding be conducted before a judge who speaks both the English and French languages or, where there is a jury, before a judge and jury who speak both the English and French languages.
Jury trial before bilingual judge and jury	(3) In a proceeding in a designated court under clause (1)(a) that is to be heard by a judge and jury, a party who speaks the French language has the right to require that the hearing be conducted before a judge and jurors who speak both the English and French languages.		



DRAFT COURTS OF JUSTICE ACT		COMMENTS	EXISTING PROVISIONS
Requisition	<p>(4) A party exercising a right under subsection (2) or (3) shall file a requisition therefor with the local registrar or clerk where the proceeding was commenced,</p> <p>(a) in an action in the Supreme Court or the District Court, before the action is set down for trial;</p> <p>(b) in an application in the Supreme Court, the District Court or a surrogate court where the party is the applicant or in a proceeding in another court where the party is the person bringing the proceeding, at the time the proceeding is commenced; or</p> <p>(c) in any other case, at least seven days before the hearing,</p> <p>or at such later time as the court orders. R.S.O. 1980,c.223,s.130(4,5).</p>	<p>Subsection (4) is derived from subsection 130(5) of the existing Act. The new provision does not require a motion to the court. The party requiring the bilingual trial simply files a requisition with the registrar or clerk of the court. Clauses (4)(b) and (c) replace clause 130(5)(b) of the existing Act and prevent a requisition for a bilingual trial from being filed immediately before the hearing. This should prevent delays caused by adjournments necessitated when a bilingual trial is requested on very short notice. Subsection (4) does, however, give the court a discretion to permit a requisition to be filed after the times specified in clauses (a), (b) and (c).</p>	<p>(5) Except by leave of the court, an application under subsection (4) shall be made,</p> <p>(a) where the proceeding is in the Supreme Court or a county or district court, before the giving of a jury notice or, if none, before the proceeding is set down for trial;</p> <p>(b) where the proceeding is in a court other than the Supreme Court or a county or district court, before the hearing of any evidence in the proceeding.</p>
Service	<p>(5) Where a requisition is filed under subsection (4),</p> <p>(a) in a proceeding in the Supreme Court, the District Court or a surrogate court, the party filing the requisition shall forthwith serve a copy of the requisition on all other parties;</p> <p>(b) in any other case, the local registrar or clerk shall forthwith notify all other parties that the requisition has been filed.</p>	<p>Subsection (5) provides for other parties to be notified when a requisition is filed.</p>	
Proceedings in English and French	<p>(6) Where a requisition is filed in accordance with subsection (4),</p> <p>(a) all evidence adduced and submissions made at the hearing in the proceeding in the English or French language shall be received, recorded and transcribed in the language in which it is given;</p> <p>(b) any other part of the hearing may be conducted in the French language if, in the opinion of the presiding judge, the hearing can be so conducted;</p> <p>(c) the court may order that clauses (a) and (b) apply to examinations for discovery, motions or any other step in the proceeding;</p>	<p>Subsection (6) lists the consequences of filing a requisition. Clause (6)(a) is derived from subsection 130(7) of the existing Act. It permits both the English and French languages to be used as languages of record.</p> <p>Clause (6)(b) is derived from clause 130(6)(a) of the existing Act.</p> <p>Clause (6)(c) is derived from clause 130(6)(b) of the existing Act.</p>	<p>(7) Evidence given in the French language in a proceeding in respect of which a direction is made under this section shall be received and recorded in the French language and shall be transcribed in that language for all purposes.</p> <p>(6) Where an application is made under subsection (4) and in addition to a direction made thereunder, the court may direct,</p> <p>(a) that the hearing or any part of the hearing be in the French language if, in the opinion of the court, the hearing or part can be so conducted effectually; and</p> <p>(b) that subsection (7) apply to oral evidence given in examinations for discovery or in any other pre-hearing stage of the proceeding.</p>

DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

- (d) the court may order, with the consent of all the parties, that pleadings and documents, other than evidence, filed in the proceeding be in the French language only;
- (e) the reasons for the decision in the proceeding may be in either the English or French language; and
- (f) on the request of a party or counsel who speaks the English or French language, but not both, the court shall provide interpretation and translation of any thing that is in the other language under clause (a), (b), (c) or (e) into the language spoken by the party or counsel. R.S.O.1980, c.223, s.130(6,7).

Clause (6)(d) is a new provision that permits the court to order, with the consent of all parties, that pleadings and other documents be filed in the French language only.

Clause (6)(e) is a new provision that permits the reasons for judgment to be in either the English or French language.

Clause (6)(f) provides that a party or counsel who is not bilingual may request the court to provide interpretation and translation services.

Appeals

(7) Where an appeal is taken in a proceeding to which subsection (6) applies,

- (a) a party who speaks the French language has the right to require the hearing of the appeal to be conducted before a judge or judges who speak both the English and French languages, in which case subsection (6) applies, with necessary modifications, to the hearing of the appeal; and

Clause (7)(a) corresponds to that part of subsection 130(4) of the existing Act which provides for bilingual appeal hearings where the trial was a bilingual trial.

Clause (7)(b) permits a party or counsel who is not bilingual to obtain from the court a translation of any part of the transcript of the trial that is in the language he or she does not speak.

- (b) the court whose decision is appealed shall provide a translation into the English or French language, at the request of a party or counsel who speaks only one of these languages, of any part of the transcript of the hearing that is in the other language.

Requisition

(8) A party exercising the right under subsection (7) shall file a requisition therefor with the registrar or clerk of the court to which the appeal is taken,

- (a) where the party is the appellant, at the time the notice of appeal is filed; or
- (b) where the party is the respondent, within ten days after the notice of appeal is served,

Subsection (8) provides that, instead of a motion, a bilingual appeal hearing is obtained on requisition to the registrar or clerk. The subsection also prescribes the time for filing the requisition and provides for service of the requisition on other parties.

or at such later time as the court orders, and shall forthwith serve a copy of the requisition on all other parties to the appeal. New.



DRAFT COURTS OF JUSTICE ACT

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Court documents

(9) A document filed by a party before the hearing in a proceeding in a small claims court or in the Provincial Court (Family Division) where the court is a designated court may be in the French language only. R.S.O.1980,c.223,s.130(8); 1983,c.3,s.1(2).

Subsection (9) is derived from subsection 130(8) of the existing Act. The new provision also extends to the Provincial Court (Family Division) where it is a designated court.

(8) Any document filed by a party in a proceeding in a small claims court that is a designated court may be in the French language.

Process

(10) A process issued in or giving rise to a criminal proceeding or a proceeding in the Provincial Offences Court where it is a designated court may be filed in the court in the French language only.

Because of subsection 130(1) of the existing Act, police officers are reluctant to issue process in the French language. Subsection (10) is intended to overcome this problem by permitting criminal process and, in areas where the Provincial Offences Court is a designated court, provincial offences process to be filed in the French language.

Translation

(11) A document or process referred to in subsection (9) or (10) that is filed in the English or French language only shall be translated by the court into the other language on the request of a party.

Subsection (11) provides that a document or process referred to in subsection (9) or (10) will be translated, on request, by the court.

Interpretation in undesignated courts

(12) Where, at a hearing in a court that is not a designated court or at a hearing in a designated court to which subsection (6) does not apply, a party acting in person makes submissions to the court in the French language or a witness gives oral evidence in the French language, the court shall provide an interpreter to translate the submissions or evidence into the English language.

Subsection (12) is a new provision which provides that, in courts that are not designated courts, and in designated court proceedings not covered by subsection (6), the court will provide an interpreter for a party acting in person or witness who makes submissions or gives evidence in the French language. In these circumstances, it is the English translation that will form part of the record.

New.

Interest and costs

Interpretation

130.--(1) In this section and in sections 131 and 132,

SECTION 130

This section and the three sections that follow replace sections 36 and 37 of the Judicature Act, which deal with prejudgment and postjudgment interest. Clause (1)(a) replaces subsections 36(1) and (2) of the Judicature Act. The new Act bases its interest provisions on the bank rate, instead of on the prime rate. Difficulties have been encountered using the prime rate because the Bank of Canada Review is not published until some time after the prime rates are set. The bank rate, however, can be determined immediately.

36.--(1) In this section, "prime rate" means the lowest rate of interest quoted by chartered banks to the most credit-worthy borrowers for prime business loans, as determined and published by the Bank of Canada.

(2) For the purposes of establishing the prime rate, the periodic publication entitled the Bank of Canada Review purporting to be published by the Bank of Canada is admissible in evidence as conclusive proof of the prime rate as set out therein, without further proof of the authenticity of the publication.



DRAFT COURTS OF JUSTICE ACT

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- (b) "date of the order" means the date the order is made, notwithstanding that the order is not entered or enforceable on that date, or that the order is varied on appeal, and in the case of an order directing a reference, the date the report on the reference is confirmed;
  - (c) "postjudgment interest rate" means the bank rate at the end of the first day of the last month of the quarter preceding the quarter in which the date of the order falls, rounded to the next higher whole number where the bank rate includes a fraction, plus 1 per cent;
  - (d) "prejudgment interest rate" means the bank rate at the end of the first day of the last month of the quarter preceding the quarter in which the proceeding was commenced, rounded to the next higher whole number where the bank rate includes a fraction, plus 1 per cent;
  - (e) "quarter" means the three-month period ending with the 31st day of March, 30th day of June, 30th day of September or 31st day of December. R.S.O.1960, c.223,s.36(1)(2).
- (2) After the first day of the last month of each quarter, the Registrar of the Supreme Court shall forthwith,
- (a) determine the prejudgment and postjudgment interest rate for the next quarter; and
  - (b) publish in The Ontario Gazette a table showing the rate determined under clause (a) for the next quarter and for all the previous quarters during the preceding ten years. New.

Clause (1)(b) defines "date of the order", a term that is used throughout the interest sections. It is intended to make clear that the relevant date for the purpose of calculating prejudgment and postjudgment interest is the date the order is made, notwithstanding that it is not entered or enforceable on that date or that the order is varied on appeal. The definition also provides that the relevant date for determining interest rates when a reference is ordered is the date the report on the reference is confirmed, since that is the date that the exact amount owing will become known.

Clause (1)(c) fixes the postjudgment interest rate for each quarter. The rate will be equal to the bank rate at the end of the first day of the last month of the quarter preceding the date of the order, rounded to a whole number if the bank rate includes a fraction, plus one percent. This means that the postjudgment interest rate will always be a whole number, which will make calculations with the rate easier. The postjudgment interest rate will be between one and two points above the bank rate, and will average 1.5 points above the bank rate. This approximates the prime rate. A similar calculation is made in clause (1)(d) for the prejudgment interest rate. Clause (1)(e) defines "quarter".

Subsection (2) requires the Registrar of the Supreme Court to determine the prejudgment and postjudgment interest rates for each quarter. He must also publish the rates in the Ontario Gazette. For convenience, the Gazette will also contain the rates determined under this subsection (i.e. those rates determined after the Courts of Justice Act comes into force) for the 10-year period preceding publication.

Calculation  
and publication  
of interest

DRAFT COURTS OF JUSTICE ACT		COMMENTS	EXISTING PROVISIONS
Prejudgment interest	<p>131.--(1) A person who is entitled to an order for the payment of money is entitled to claim and have included in the order an award of interest thereon at the prejudgment interest rate, calculated,</p> <p>(a) where the order is made on a liquidated claim, from the date the cause of action arose to the date of the order; or</p> <p>(b) where the order is made on an unliquidated claim, from the date the person entitled gave notice in writing of his claim to the person liable therefor to the date of the order.</p> <p>(2) Where the order includes an amount for special damages, the interest calculated under subsection (1) shall be calculated on the balance of special damages incurred as totalled at the end of each six-month period following the notice in writing referred to in clause (1)(b) and at the date of the order.</p> <p>(3) Interest shall not be awarded under subsection (1),</p> <p>(a) on exemplary or punitive damages;</p> <p>(b) on interest accruing under this section;</p> <p>(c) on an award of costs in the proceeding;</p> <p>(d) on that part of the order that represents pecuniary loss arising after the date of the order and that is identified by a finding of the court;</p> <p>(e) where the order is made on consent, except by consent of the debtor; or</p> <p>(f) where interest is payable by a right other than under this section.</p> <p>R.S.O. 1980, c. 223, s. 36(3-6).</p> <p>(4) Where a proceeding is commenced before this section comes into force, this section does not apply and section 36 of the <u>Judicature Act</u>, being chapter 223 of the Revised Statutes of Ontario, 1980, continues to apply, notwithstanding section</p>	<p>This section is derived from subsections 36(3), (4) and (5) of the <u>Judicature Act</u>.</p> <p>Subsection (4) provides that this section does not apply to proceedings commenced before the section comes into force. Those proceedings will continue to be governed by the old provisions of the <u>Judicature Act</u>.</p>	<p>(3) Subject to subsection (6), a person who is entitled to a judgment for the payment of money is entitled to claim and have included in the judgment an award of interest thereon,</p> <p>(a) at the prime rate existing for the month preceding the month on which the action was commenced; and</p> <p>(b) calculated,</p> <p>(i) where the judgment is given upon a liquidated claim, from the date the cause of action arose to the date of the judgment, or</p> <p>(ii) where the judgment is given upon an unliquidated claim, from the date the person entitled gave notice in writing of his claim to the person liable therefor to the date of the judgment.</p> <p>(4) Where the judgment includes an amount for special damages, the interest calculated under subsection (3) shall be calculated on the balance of special damages incurred as totalled at the end of each six month period following the notice in writing referred to in subclause (3) (b) (ii) and at the date of the judgment.</p> <p>(5) Interest under this section shall not be awarded,</p> <p>(a) on exemplary or punitive damages;</p> <p>(b) on interest accruing under this section;</p> <p>(c) on an award of costs in the action;</p> <p>(d) on that part of the judgment that represents pecuniary loss arising after the date of the judgment and that is identified by a finding of the court;</p> <p>(e) except by consent of the judgment debtor, where the judgment is given on consent; or</p> <p>(f) where interest is payable by a right other than under this section.</p>
Special damages			
Exclusion			
Application			

DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

37.—(1) A verdict or judgment bears interest from the time of the rendering of the verdict, or of giving the judgment, as the case may be, at the prime rate established in the same manner as for the purposes of section 36, notwithstanding that the entry of judgment has been suspended by a proceeding in the action, including an appeal.

SECTION 132

Post judgment interest	132.—(1) Money owing under an order, including costs fixed by the court, bears interest at the postjudgment interest rate, calculated from the date of the order.	Subsection (1) is derived from subsection 37(1) of the Judicature Act. The new provision makes clear that postjudgment interest runs on costs fixed by the court from the date of the order.
Interest on periodic payments	(2) Where an order provides for periodic payments, each payment in default shall bear interest only from the date of default.	Subsection (2) clarifies the calculation of postjudgment interest on orders that provide for periodic payments.
Interest on orders originating outside Ontario	(3) Where an order is based on an order given outside Ontario or an order of a court outside Ontario is filed with a court in Ontario for the purpose of enforcement, money owing under the order bears interest at the rate, if any, applicable to the order given outside Ontario by the law of the place where it was given.	Subsection (3) is a new provision intended to clarify the application of postjudgment interest to orders based on orders made outside Ontario, and to orders made outside Ontario but filed in Ontario for enforcement (e.g. under the <u>Reciprocal Enforcement of Maintenance Orders Act</u> ).
Assessed costs without order	(4) Where costs are assessed under an order or without an order, the costs bear interest at the postjudgment interest rate in the same manner as if the issuance of the certificate of assessment were the making of an order. R.S.O.1980, c.223,s.37(1).	Subsection (4) is a new subsection that clarifies the application of postjudgment interest to costs assessed under an order. The new subsection is also intended to fit with provisions in the new Rules that, in some cases, permit costs to be assessed without an order.
Other provision for interest	(5) Interest shall not be awarded under this section where interest is payable by a right other than under this section. <u>New.</u>	Subsection (5) is a new provision that corresponds to a similar provision in the prejudgment interest section. If the parties have agreed on the interest, the agreement will prevail.
Application	(6) Where an order for the payment of money is made before this section comes into force, this section does not apply and section 37 of the <u>Judicature Act</u> , being chapter 223 of the Revised Statutes of Ontario, 1980, continues to apply, notwithstanding section 177.	Subsection (6) provides that this section does not apply to orders made before it comes into force. Those orders will continue to be dealt with under section 37 of the <u>Judicature Act</u> .





DRAFT COURTS OF JUSTICE ACT		COMMENTS	EXISTING PROVISIONS
Judge not to hear appeal from own decision	<p style="text-align: center;">Appeals</p> <p>135. A Judge shall not sit as a member of a court hearing an appeal from his or her own decision. R.S.O.1980,c.223,ss.42(6),46(5).</p>	<p>SECTION 135</p> <p>This provision is derived from subsections 42(6) and 46(5) of the <u>Judicature Act</u>.</p>	<p><del>42</del>(6) A judge shall not sit on the hearing of an appeal from a judgment or order made by himself</p>
Certain orders not appealable	<p>136.--(1) No appeal lies from,</p> <p>(a) an order granting an extension of time for appeal; or</p> <p>(b) an order of a Judge giving leave to dispute the jurisdiction of the court, where a party has been served outside Ontario. <u>New.</u></p>	<p>SECTION 136</p> <p>Subsection (1) is a new provision intended to eliminate a small category of unnecessary appeals.</p>	<p><del>46</del>(5) A judge of the Divisional Court shall not sit as a member of the Divisional Court considering an appeal from his own decision.</p>
Leave to appeal required	<p>(2) No appeal lies without leave of the court to which the appeal is taken,</p> <p>(a) from an order made with the consent of the parties; or</p> <p>(b) where the appeal is only as to costs that are in the discretion of the court that made the order for costs. R.S.O.1980,c.223,ss.27,80(4).</p>	<p>Subsection (2) is derived from section 27 and subsection 80(4) of the <u>Judicature Act</u>. The new provision requires leave to be obtained from the court to which the appeal is taken.</p>	<p><b>27.</b> No order of the High Court or of a judge thereof made with the consent of the parties is subject to appeal, and no order of the High Court or of a judge thereof as to costs only that by law are left to the discretion of the court is subject to appeal on the ground that the discretion was wrongly exercised or that it was exercised under a misapprehension as to the facts or the law or on any other ground, except by leave of the court or judge making the order</p> <p><del>80</del>(4) Costs of proceedings before judicial officers, unless otherwise disposed of, are in their discretion subject to appeal</p>

DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

Powers on appeal

137.-(1) Unless otherwise provided, a court to which an appeal is taken may,

- (a) make any interlocutory or final order that ought to or could have been made by the court or tribunal appealed from;
- (b) set aside or vary any interlocutory or final order made in the proceeding;
- (c) order a new trial; and
- (d) make any other order that is considered just,

even though a party in whose favour relief is granted under this subsection has not sought such relief.

Idem

(2) Unless otherwise provided, a court to which an appeal is taken may, in a proper case,

- (a) draw inferences of fact from the evidence, except that no inference shall be drawn that is inconsistent with a finding that has not been set aside;
- (b) receive further evidence; and
- (c) direct a reference or the trial of an issue,

to enable the court to determine the appeal.

R.S.O.1980,c.223,s.29(1,2).

SECTION 137

Subsections (1) and (2) are derived from section 29 of the Judicature Act and section 33, section 38 and subsection 39(1) of the County Courts Act.

29.-(1) The court upon an appeal may give any judgment that ought to have been pronounced and may make such further or other order as is considered just.

(2) The court has power to draw inferences of fact not inconsistent with any finding of the jury that is not set aside, and if satisfied that there are before it all the materials necessary for finally determining the matters in controversy, or any of them, or for awarding any relief sought, it may give judgment accordingly, but if it is of opinion that there are not sufficient materials before it to enable it to give judgment, it may direct the appeal to stand over for further consideration and may direct that such issues or questions of fact be tried and determined and such accounts be taken and such inquiries be made as are considered necessary to enable it on such further consideration finally to dispose of the matters in controversy.

(3) The powers conferred by subsections (1) and (2) may be exercised notwithstanding that the appeal is as to part only of the judgment, order or decision, and may be exercised in favour of all or any of the parties, although they may not have appealed.

County Courts Act:

33. Where in any Act an appeal to the county court is provided for, the county court has the same powers upon the hearing and disposition of the appeal as the Court of Appeal has under the Judicature Act in civil matters, subject to any express provision in the Act that provides for the appeal.

38.-(1) The Court of Appeal has all the powers and duties, as to amendment and otherwise, of the judge appealed from, and full discretionary power to receive further evidence upon questions of fact, either by oral examination before the court or as may be directed.

(2) Such further evidence may be given without special leave as to matters that have occurred after the date of the judgment, order or decision complained of.

(3) Except as provided by subsection (2), upon an appeal from a judgment, order or decision given upon the merits at the trial or hearing, such further evidence shall be admitted on special grounds only, and not without the special leave of the court.

39.-(1) On an appeal, the Court of Appeal may set aside the judgment and direct any other judgment to be entered or may direct a new trial to be had, and may make such other order as to costs and otherwise as appears just.



DRAFT COURTS OF JUSTICE ACT		EXISTING PROVISIONS	
COMMENTS			
Idem	(3) Where an appeal is as to part only of an order or decision, the court may exercise the powers conferred by subsections (1) and (2) in respect of the whole or any part of the order or decision. <u>New.</u>	30(2) If it appears that a substantial wrong or miscarriage was so occasioned but it affected part only of the matter in controversy or some or one only of the parties, the court may give final judgment as to any part or any party not so affected, and direct a new trial as to the other part only, or only as to the other parties.	
New trial	(4) A court to which an appeal is taken shall not direct a new trial unless some substantial wrong or miscarriage of justice has occurred.	30.—(1) A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question that the judge at the trial was not asked to leave to the jury, or by reason of any omission or irregularity in the course of the trial, unless some substantial wrong or miscarriage has been thereby occasioned.	
Idem	(5) Subject to subsection (4), a new trial may be ordered on any question without interfering with the decision on any other question. R.S.O.1980, c.223,ss.30,31.	31. A new trial may be ordered upon any question without interfering with the decision upon any other question.	
Public hearings	Public Access  138.—(1) Subject to subsection (2) and the rules of court, all court hearings shall be open to the public. R.S.O.1980,c.223,s.117.	32. When the judge presiding at the hearing or trial of a cause or matter deems it to be in the interest of public decency and morals, he may order that the public be excluded from the court.	
Exception	(2) The court may order the public to be excluded from a hearing where,  (a) there is reason to believe that the hearing would disclose matters harmful to public security; or  (b) the possibility of serious prejudice or injustice to any person justifies a departure from the general principle that court hearings should be open to the public.	117. Notwithstanding the provisions of this or any other Act or regulation, all motions and applications shall be heard in open court, except as provided by the rules.	
Disclosure of information	(3) Where a proceeding is heard in the absence of the public, disclosure of information relating to the proceeding is not contempt of court unless the court expressly prohibited the disclosure of the information. <u>New.</u>		

DRAFT COURTS OF JUSTICE ACT

Prohibition  
against  
photography,  
etc., at  
court  
hearing

139.-(1) Subject to subsections (2) and (3), no person shall,

(a) take or attempt to take a photograph, motion picture, audio recording or other record capable of producing visual or aural representations by electronic means or otherwise,

(i) at a court hearing,

(ii) of any person entering or leaving the room in which a court hearing is to be or has been convened, or

(iii) of any person in the building in which a court hearing is to be or has been convened where there is reasonable ground for believing that the person is there for the purpose of attending or leaving the hearing; or

(b) publish, broadcast, reproduce or otherwise disseminate a photograph, motion picture, audio recording or record taken in contravention of clause (a).

Sketches

(2) Nothing in subsection (1) prohibits a person from unobtrusively making notes or sketches at a court hearing.

Exceptions

(3) Subsection (1) does not apply to a photograph, motion picture, audio recording or record made with authorization of the judge,

(a) where required for the presentation of evidence or the making of a record or for any other purpose of the court hearing;

(b) in connection with any investigative, naturalization, ceremonial or other similar proceeding; or

(c) with the consent of the parties and witnesses, for such educational or instructional purposes as the judge approves.

Offence

(4) Every person who contravenes this section is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 or to imprisonment for a term of not more than six months, or to both.

R.S.O.1980,c.223,s.67.

COMMENTS

SECTION 139

This section is derived from section 67 of the Judicature Act. The section has been expanded to prohibit unauthorized audio recordings of court proceedings. Otherwise, the slight changes in language do not change the meaning or scope of the section.

Subsection (2) is included to clarify the law respecting the taking of notes and sketches. On a strict interpretation of subsection (1), a sketch could be held to be a "record capable of producing visual representations". Subsection (2) clarifies that this is not the intention.

EXISTING PROVISIONS

67.-(1) In this section,

(a) "judge" means the person presiding at a judicial proceeding;

(b) "judicial proceeding" means a proceeding of a court of record;

(c) "precincts of the building" means the space enclosed by the walls of the building.

(2) Subject to subsection (3), no person shall,

(a) take or attempt to take any photograph, motion picture or other record capable of producing visual representations by electronic means or otherwise,

(i) at a judicial proceeding; or

(ii) of any person entering or leaving the room in which the judicial proceeding is to be or has been convened, or

(iii) of any person in the precincts of the building in which the judicial proceeding is to be or has been convened where there is reasonable ground for believing that such person is there for the purpose of attending or leaving the proceeding; or

(b) publish, broadcast, reproduce or otherwise disseminate any photograph, motion picture or record taken or made in contravention of clause (a).

(3) Subsection (2) does not apply to any photograph, motion picture or record taken or made upon authorization of the judge,

(a) where required for the presentation of evidence or the making of a record or for any other purpose of the judicial proceeding;

(b) in connection with any investigative, ceremonial, naturalization or similar proceedings; or

(c) with the consent of the parties and witnesses, for such educational or instructional purposes as may be approved by the judge.

(4) Every person who is in contravention of this section is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 or to imprisonment for a term of not more than six months, or to both.

DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

Documents public

140.--(1) On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless a statute or an order of the court provides otherwise.  
R.S.O.1980,c.223,s.129(4).

Sealing documents

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential and not form part of the public record. New.

Court lists public

(3) On payment of the prescribed fee, a person is entitled to see any list maintained by a court of civil proceedings commenced or judgments entered.

Copies

(4) On payment of the prescribed fee, a person is entitled to a copy of any document he or she is entitled to see. R.S.O.1980,c.223,s.129(1,3).

Multiplicity of proceedings

141. As far as possible, multiplicity of legal proceedings shall be avoided. R.S.O.1980,c.223, s.18,par.8.

Miscellaneous

SECTION 140

Subsection (1) is derived from subsection 129(4) of the Judicature Act. The new provision permits any person to see documents filed in civil proceedings in courts, not just "persons affected". The new section makes subsection 129(2) of the Judicature Act unnecessary.

Subsection (2) provides authority for a court to order that certain documents be kept confidential.

Subsection (3) is derived from subsection 129(1) of the Judicature Act.

Subsection (4) is derived from subsections 129(3) and (4) of the Judicature Act.

SECTION 141

This section is derived from paragraph 8 of section 18 of the Judicature Act.

129.--(1) Every person shall have access to and is entitled to inspect the books of the Supreme Court and of the county courts, containing records or entries of the writs issued and judgments entered, and no person desiring such access or inspection shall be required, as a condition of his right thereto, to furnish the names of the parties or the style of the causes or matters in respect of which the access or inspection is sought.

(2) Every officer having the charge or custody of any such book shall upon request produce for inspection any writ of summons or copy thereof so issued, and any judgment roll, of which records or entries are by law required to be kept in such book.

(3) The fee payable in respect of such inspection is 25 cents for a general search, and 10 cents for each writ of summons or judgment roll inspected, and 10 cents per folio is also payable for all extracts, whether made by the person making the search or by the officer.

(4) A person affected by any record in any court, whether it concerns the Queen or other person, is entitled, upon payment of the proper fee, to search and examine it and to have an exemplification or a certified copy thereof made and delivered to him by the proper officer.

18 8. The court in the exercise of the jurisdiction vested in it by this Act in every cause or matter pending before it has power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as it deems just, all such remedies as any of the parties appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them in such cause or matter, so that, as far as possible, all matters so in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided



DRAFT COURTS OF JUSTICE ACT

Joint liability  
not affected by  
judgment or  
release

142.--(1) Where two or more persons are jointly  
liable in respect of the same cause of action, a  
judgment against or release of one of them does not  
preclude judgment against any other in the same or  
a separate proceeding.

Two proceedings  
in respect of  
same damage

(2) Where a person who has suffered damage  
brings two or more proceedings in respect of the  
damage, the person is not entitled to costs in any  
of the proceedings, except the first proceeding in  
which judgment is obtained, unless the court is of  
the opinion that there were reasonable grounds for  
bringing more than one proceeding. New.

Vexatious  
proceedings

143.--(1) Where a judge of the Supreme Court is  
satisfied, on application, that a person has  
habitually, persistently and without reasonable  
grounds,  
(a) instituted vexatious proceedings in any  
court; or  
(b) conducted a proceeding in any court in a  
vexatious manner,  
the judge may order that,

(c) no further proceeding be instituted by  
the person in any court; or  
(d) a proceeding previously instituted by  
the person in any court not be  
continued,  
except by leave of a judge of the Supreme Court.

Attorney  
General

(2) An application under subsection (1) shall be  
made only with the consent of the Attorney General,  
and the Attorney General is entitled to be heard on  
the application. R.S.O. 1980, c. 523, s. 1(1,2).

COMMENTS

SECTION 142

This is a new provision intended to implement a  
recommendation of the Morden subcommittee. It abolishes  
the rule that judgment against, or a release of, a person  
who is jointly liable prevents judgment from being  
obtained against any other joint wrongdoer. The provision  
will make it unnecessary for the new Rules to incorporate  
the joint liability provisions of existing rules 54 and 65.

Subsection (2) is a complementary provision intended  
to discourage unnecessary proceedings.

SECTION 143

This section is derived from the Vexatious Proceedings  
Act. Subsection (1) expands the grounds on which an order  
may be made against a vexatious litigant to include  
conducting a proceeding in a vexatious manner. In Foy v.  
Foy (No.2) (1979), 26 O.R. (2d) 220, a majority of the  
Court of Appeal held that, although one of the parties had  
brought "a myriad of interlocutory proceedings", the  
language of the existing Act was not broad enough to permit  
an order to be made on that basis. The new provision is  
intended to overcome that problem.

Vexatious Proceedings Act:

1.--(1) Where upon an application made by way of orig-  
inating notice according to the practice of the court and with  
the consent in writing of the Attorney General a judge of  
the Supreme Court is satisfied that any person has habitually  
and persistently and without any reasonable ground instituted  
vexatious legal proceedings in the Supreme Court or in any  
other court against the same person or against different  
persons, the judge may order that no legal proceedings shall,  
without leave of the Supreme Court or a judge thereof, be  
instituted in any court by the person taking such vexatious  
legal proceedings, and such leave shall not be given unless the  
court or judge is satisfied that the proceedings are not an  
abuse of the process of the court and that there is *prima*  
*facie* ground for the proceedings.

Subsection (2) is derived from subsection 1(2) of the  
Vexatious Proceedings Act.

(2) The Attorney General has the right to appear and be  
heard in person or by counsel upon any application under  
subsection (1).

EXISTING PROVISIONS

DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

Motion for  
leave to  
proceed

(3) Where a person against whom an order under subsection (1) has been made seeks leave to institute a proceeding, he or she shall do so by way of an application in the Supreme Court.

Leave to  
proceed

(4) Where an application for leave is made under subsection (3),

(a) leave shall be granted only if the court is satisfied that the proceeding sought to be instituted or continued is not an abuse of process and that there are reasonable grounds for the proceeding;

(b) the person making the application for leave may seek the rescission of the order made under subsection (1) but may not seek any other relief on the application;

(c) the court may rescind the order made under subsection (1);

(d) the Attorney General is entitled to be heard on the application; and

(e) no appeal lies from a refusal to grant relief to the applicant.

Abuse of  
process

(5) Nothing in this section limits the authority of a court to stay or dismiss a proceeding as an abuse of process or on any other ground. New.

Enforcement  
of orders and  
process

144. The orders and process of a court in Ontario are enforceable throughout Ontario. New.

Subsection (3) indicates how a person against whom an order has been made may seek leave to institute or continue a proceeding.

Clause (4)(a) is derived from the concluding words of subsection 1(1) of the Vexatious Proceedings Act.

Clauses (4)(b), (c), (d) and (e) are new provisions. Clause (b) is intended to prevent a person against whom an order has been made from harassing others by instituting applications for leave that also claim other relief. The only other relief permitted by clause (b) is an order rescinding the original order. The rescission order would be made under clause (c). Clause (d) permits the Attorney General to appear on the application for leave. Clause (e) prevents a vexatious litigant from endlessly appealing a refusal to grant leave.

Subsection (5) preserves the authority of the courts to stay or dismiss a proceeding as an abuse of process.

SECTION 144

This is a new provision, intended to make it clear that orders of a court with limited territorial jurisdiction are enforceable throughout Ontario.

DRAFT COURTS OF JUSTICE ACT		COMMENTS	EXISTING PROVISIONS
Enforcement of bonds and recognizances	145.--(1) A bond or recognizance arising out of a civil proceeding may be enforced in the same manner as an order for the payment of money by leave of a judge on motion by the Attorney General or any other person entitled to enforcement.  (2) A fine for contempt of court may be enforced by the Attorney General in the same manner as an order for the payment of money or in any other manner permitted by law.  (3) The sheriff to whom a writ obtained under subsection (1) or (2) is directed shall proceed immediately to carry out the writ without a direction to levy. R.S.O.1980,c.144.	SECTION 145  The Criminal Code and the Provincial Offences Act contain specific provisions dealing with the enforcement of fines and recognizances under those Acts. However, there is a small category of fines and recognizances that are not dealt with by those Acts. For example, a fine imposed for contempt is not enforceable under the Criminal Code or the Provincial Offences Act. These fines are enforced under the Estreats Act, an archaic statute that is not widely known. This provision replaces the Estreats Act and provides a straightforward method of enforcing fines, bonds and recognizances that are not enforced under other statutes.	
Enforcement of fines for contempt			113. Where persons who are subjects of a foreign country having a consul in Canada authorized to act as the official representative of such subjects are entitled to moneys that have been paid into court or that are in the hands of an executor or administrator, the moneys may be paid to the consul.
Levy			
Payment to foreign payee	146. Money that has been paid into court or that is in the hands of an executor or administrator, and that is payable to a person who is a subject of a foreign country that has a consul in Canada who is authorized to act as the person's official representative, may be paid to the consul.  R.S.O.1980,c.223,s.113.	SECTION 146  This section is derived from section 113 of the Judicature Act.	
Seal of court	147.--(1) The courts shall have such seals as are approved by the Attorney General.  (2) Every document issued out of a court in a civil proceeding shall bear the seal of the court.  R.S.O.1980,c.223,ss.12,94.	SECTION 147  This section is derived from sections 12 and 94 of the Judicature Act, clause 21(1)(d) of the Unified Family Court Act, section 3 of the Surrogate Courts Act and section 5 of the Small Claims Courts Act.	12. There shall be a seal for the Supreme Court which shall be approved by the Lieutenant Governor in Council.  14.--(1) In the offices of the local registrars and deputy registrars such seals shall be used as the Lieutenant Governor in Council from time to time may direct and they shall be impressed on every writ and other document issued out of such offices, and every such writ and document and every exemplification and copy thereof purporting to be sealed with such a seal shall be received in evidence in all courts without further proof thereof.
Idem			(2) Until other seals are authorized by the Lieutenant Governor in Council, the seals in use shall continue to be used.



DRAFT COURTS OF JUSTICE ACT	COMMENTS	EXISTING PROVISIONS
<p>Jurisdiction of Federal Court</p> <p>148. The Federal Court of Canada has jurisdiction,</p> <p>(a) in controversies between Canada and Ontario;</p> <p>(b) in controversies between Ontario and any other province in which an enactment similar to this section is in force,</p> <p>in accordance with section 19 of the Federal Court Act (Canada). R.S.O.1980, c.125, s.1.</p> <p>R.S.C.1970 (2nd Supp.), c.10</p>	<p>SECTION 148</p> <p>This section is derived from section 1 of the Dominion Courts Act. References to the Supreme Court of Canada have been deleted to accord with amendments that have been made to the Supreme Court Act (Canada) since the Dominion Courts Act was first enacted.</p>	<p><u>Unified Family Court Act:</u></p> <p>21.—(1) The Lieutenant Governor in Council may make rules regulating any matters relating to the practice and procedure of the Court, including, without limiting the generality of the foregoing,</p> <p>(d) prescribing the seal of the Court;</p> <p><u>Surrogate Courts Act:</u></p> <p>3. Every surrogate court shall be provided with a seal approved by the Lieutenant Governor.</p> <p><u>Small Claims Courts Act:</u></p> <p>5. Every small claims court shall have a seal, with which all process shall be sealed or stamped, and that shall be paid for out of the Consolidated Revenue Fund.</p> <p><u>Dominion Courts Act:</u></p> <p>1. The Supreme Court of Canada and the Federal Court of Canada, or the Supreme Court of Canada alone, according to the <u>Supreme Court Act (Canada)</u> and the <u>Federal Court Act (Canada)</u> have jurisdiction,</p> <p>(a) in controversies between Canada and Ontario;</p> <p>(b) in controversies between any other province of Canada in which an Act similar to this Act is in force and Ontario;</p> <p>(c) in actions or proceedings in which the parties by their pleadings have raised the question of the validity of an Act of the Parliament of Canada or of an Act of the Legislature of Ontario, when in the opinion of a judge of the court in which the same are pending the question is material, and in such case the judge shall, at the request of the parties, and may without such request if he thinks fit, order the case to be removed to the Supreme Court of Canada in order that the question may be decided.</p>

DRAFT COURTS OF JUSTICE ACT

PART VIII  
TRANSITIONAL PROVISIONS

Application to  
all proceedings

149.-(1) This Act applies to all proceedings, whether commenced before or after this Act comes into force, subject to subsection (2) and except as otherwise provided.

Exceptions

(2) Where a proceeding is commenced before this Act comes into force, on motion, the court in which the proceeding was commenced may order, subject to such terms as are considered just and subject to variation by a further order, that the proceeding be continued under the Acts and rules of court that governed the matter immediately before this Act comes into force.

Continuation  
of county court  
proceedings

150.-(1) A proceeding commenced in a county or district court, a county or district court judge's criminal court or a court of general sessions of the peace and pending when Part II comes into force is continued in the District Court.

References  
of county and  
district courts

(2) A reference in an Act or regulation to a county or district court or to a judge or the Chief Judge or Associate Chief Judge thereof shall be deemed to be a reference to the District Court or a judge, the Chief Judge or Associate Chief Judge thereof, respectively, and a reference to a senior judge of the county or district courts shall be deemed to be a reference to a senior judge of a District Court region.

COMMENTS

SECTION 149

Subsection (1) provides that the Courts of Justice Act will apply to all proceedings, whether commenced before or after the Act comes into force.

Subsection (2) permits the court in which a proceeding was commenced to order that the proceeding be continued under the legislation and rules that existed before the coming into force of the Courts of Justice Act.

SECTION 150

This is a transitional provision that relates to the creation of the District Court and the assumption by the District Court of the jurisdiction formerly exercised by the county and district courts, the county and district court judges' criminal courts and the courts of general sessions of the peace.

EXISTING PROVISIONS

DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

References to  
provincial  
courts

151. A reference in an Act or regulation to one or more provincial court (criminal division), provincial court (family division) or a provincial offences court shall be deemed to be a reference to the Provincial Court (Criminal Division), the Provincial Court (Family Division) or the Provincial Offences Court.

Reference to  
territorial  
jurisdiction

152. Where by an Act or regulation, jurisdiction is conferred on a particular county or district court, provincial court or provincial offences court, the jurisdiction shall be deemed to be conferred on the District Court, Provincial Court or Provincial Offences Court sitting in the county or district of the court named.

SECTION 151

This is a transitional provision related to the amalgamation of the provincial courts of the counties and districts into three province-wide courts.

SECTION 152

This provision is related to the establishment of the new province-wide courts. It is intended to indicate that, where previous legislation gave jurisdiction to the county or district court or a provincial court of a particular county or district, that jurisdiction will continue to be exercised in that county or district.



DRAFT COURTS OF JUSTICE ACT

Changes in terminology

PART IX  
COMPLEMENTARY AMENDMENTS TO STATUTE LAW

153. A reference in any Act, rule or regulation, or order or other court process to a term set out in column 1 of the Table, or any form thereof, shall be deemed to refer to the corresponding term set out opposite thereto in column 2.

TABLE

Column 1	Column 2
1. administrator <u>ad litem</u>	1. litigation administrator
2. certificate of <u>lis pendens</u>	2. certificate of pending litigation
3. guardian <u>ad litem</u>	3. litigation guardian
4. next friend	4. litigation guardian
5. originating motion	5. application
6. origination notice	6. notice of application
7. Rules of Practice and Procedure of the Supreme Court of Ontario made by the Rules Committee	7. Rules of Civil Procedure
8. taxation of costs	8. assessment of costs
9. taxing officer	9. assessment officer
10. writ of <u>fieri facias</u>	10. writ of seizure and sale
11. writ of summons	11. statement of claim or notice of action

R.S.O. 1980, c.25, s.31(1), repealed

154. Subsection 31(1) of the Arbitrations Act, being chapter 25 of the Revised Statutes of Ontario, 1980, is repealed.

COMMENTS

SECTION 153

This section provides a short table showing some of the major changes in terminology being made by the new Act and new Rules. The section deems references to the old terms to be references to the new terms.

SECTION 154

This section repeals an unnecessary rule-making power. Section 88 of the Courts of Justice Act provides sufficient authority to regulate procedure in court proceedings under the Arbitrations Act.

EXISTING PROVISIONS

(For the text of provisions repealed or amended by the Courts of Justice Act, please see the official statute volumes.)

DRAFT COURTS OF JUSTICE ACT

R.S.O.1980, c.31, s.6, 7, 12, amended  
155. The Bailiffs Act, being chapter 37 of the Revised Statutes of Ontario, 1980, is amended by striking out "clerk of the peace" where it occurs in sections 6, 7 and 12 and inserting in lieu thereof in each instance "sheriff".

R.S.O.1980, c.68, s.68, repealed  
156. Section 68 of the Children's Law Reform Act, being chapter 68 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is repealed.

R.S.O.1980, c.86, repealed  
157. The Constitutional Questions Act, being chapter 86 of the Revised Statutes of Ontario, 1980, is repealed.

R.S.O.1980, c.93, s.3(6), re-enacted  
158. Subsection 3(6) of the Coroners Act, being chapter 93 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Crown attorney notified of appointment  
(6) A copy of the order appointing a coroner shall be sent by the Minister to the Crown attorney of any county or district in which the coroner will ordinarily act.

R.S.O.1980, c.99, repealed  
159. The County Court Judges' Criminal Courts Act, being chapter 99 of the Revised Statutes of Ontario, 1980, is repealed.

COMMENTS

SECTION 155

This section is one of several provisions that implement a recommendation made in the 1973 Ontario Law Reform Commission Report on the Administration of Ontario Courts, Part II, p. 94. The Commission recommended that the office of clerk of the peace, now held by the Crown Attorney, be abolished and that the duties of he clerk of the peace be performed by other officials. This section amends the Bailiffs Act so that the functions of the clerk of the peace under that Act (making recommendations on the appointment of private bailiffs and investigating complaints against private bailiffs) will be transferred to the sheriff.

The federal government will be asked to amend the Ontario provisions of the Schedule to Part XXII of the Criminal Code (Canada), which contain the only federal reference to the clerk of the peace, so that they refer to the local registrar of the District Court of Ontario.

SECTION 156

Section 68 of the Children's Law Reform Act deals with the circumstances in which court proceedings under that Act may be closed to the public. In future, this matter will be dealt with by section 138 of the Courts of Justice Act.

SECTION 157

The provisions of the Constitutional Questions Act, repealed by this section, will appear as section 18 of the Courts of Justice Act.

SECTION 158

This section amends the Coroners Act so that the Crown attorney, instead of the clerk of the peace, will be notified of the appointment of coroners.

SECTION 159

This section abolishes the county and district court judges' criminal courts. The federal government will be asked to give the jurisdiction of these courts to the District Court of Ontario.

EXISTING PROVISIONS

(For the text of provisions repealed or amended by the Courts of Justice Act, please see the official statute volumes.)

DRAFT COURTS OF JUSTICE ACT		EXISTING PROVISIONS
R.S.O. 1980, c. 100; 1981, c. 24, repealed	160. The <u>County Courts Act</u> , being chapter 100 of the Revised Statutes of Ontario, 1980 and the <u>County Courts Amendment Act, 1981</u> , being chapter 24, are repealed.	<p>SECTION 160</p> <p>Part II of the <u>Courts of Justice Act</u> will replace the <u>County Courts Act</u>.</p>
R.S.O. 1980, c. 101, repealed	161. The <u>County Judges Act</u> , being chapter 101 of the Revised Statutes of Ontario, 1980, is repealed.	<p>SECTION 161</p> <p>The provisions of the <u>County Judges Act</u> are incorporated in Part II of the <u>Courts of Justice Act</u>.</p>
R.S.O. 1980, c. 107, s. 6, repealed	162.-(1) Section 6 of the <u>Crown Attorneys Act</u> , being chapter 107 of the Revised Statutes of Ontario, 1980, is repealed.	<p>SECTION 162</p> <p>Subsection (1) repeals the provision that now makes the Crown attorney the clerk of the peace.</p>
Idem s. 12(b)(ii), re-enacted; s. 12(b)(iii), repealed	(2) Subclauses 12(b)(ii) and (iii) of the said Act are repealed and the following substituted therefor:  (ii) at sittings of the District Court, and  . . . . .	<p>Subsection (2) replaces references to the court of general sessions of the peace and the county or district court judge's criminal court with a reference to the District Court.</p>
Idem s. 12(i), repealed	(3) Clause 12(i) of the said Act is repealed.	<p>Subsection (3) repeals a provision that, since the transfer of responsibility over the administration of justice from the municipalities to the provincial government, is now obsolete.</p>
Idem s. 14, amended	(4) Section 14 of the said Act is amended by striking out "and clerk of the peace" in the second and third lines.	<p>Subsections (4) and (5) reflect the fact that the Crown attorney will no longer be acting as clerk of the peace.</p>
Idem s. 15, amended	(5) Section 15 of the said Act is amended by striking out "and clerk of the peace" in the first line.	
R.S.O. 1980, c. 118, s. 19, repealed	163. Section 19 of the <u>Developmental Services Act</u> , being chapter 118 of the Revised Statutes of Ontario, 1980, is repealed.	<p>SECTION 163</p> <p>Section 19 of the <u>Developmental Services Act</u> deals with the service of documents on residents of facilities for the developmentally handicapped. The provision is being repealed because the issue of service will be dealt with in the new Rules.</p>

(For the text of provisions repealed or amended by the Courts of Justice Act, please see the official statute volumes.)



DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

R.S.O. 1980, c. 120, s. 2(3), amended

164. Subsection 2(3) of the Disorderly Houses Act, being chapter 120 of the Revised Statutes of Ontario, 1980, is amended by striking out "clerk of the peace" in the second line and inserting in lieu thereof "local registrar of the District Court".

SECTION 164

This is another section that is consequent on the transfer of duties from the clerk of the peace to other officials.

(For the text of provisions repealed or amended by the Courts of Justice Act, please see the official statute volumes.)

R.S.O. 1980, c. 125, repealed

165. The Dominion Courts Act, being chapter 125 of the Revised Statutes of Ontario, 1980, is repealed.

SECTION 165

Section 1 of the Dominion Courts Act is replaced by section 148 of the Courts of Justice Act. The use of Ontario facilities by federally-established courts, which is dealt with in section 2 of the Dominion Courts Act, will be dealt with in future by agreements between the federal and provincial government.

R.S.O. 1980, c. 143, s. 26, repealed

166. Section 26 of the Estates Administration Act, being chapter 143 of the Revised Statutes of Ontario, 1980, is repealed.

SECTION 166

The rule-making authority in section 88 of the Courts of Justice Act is sufficient to provide for procedures in proceedings under the Estates Administration Act.

R.S.O. 1980, c. 144, repealed

167. The Estreats Act, being chapter 144 of the Revised Statutes of Ontario, 1980, is repealed.

SECTION 167

With the enactment of section 145 of the Courts of Justice Act, the Estreats Act will no longer be necessary.

R.S.O. 1980, c. 145, s. 48, re-enacted; s. 48a, enacted

168.--(1) Section 48 of the Evidence Act, being chapter 145 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

SECTION 168

Subsection (1) implements two requests of the Morden Subcommittee. First, they requested that section 48 of the Evidence Act be amended to make clear that transcripts of examinations on discovery can be introduced in court without calling the person who produced the transcript as a witness. Subsection (1) re-enacts section 48 of the Evidence Act based on section 149 of the Uniform Evidence Act recommended by the Uniform Law Conference of Canada. Subsection 48(3) has been added to the Uniform provision to achieve the object desired by the Morden Subcommittee.

Admissibility of judicial records

48.--(1) Evidence of a proceeding or record in or of a court in or out of Canada or of a coroner in any province of Canada may be given by the production of an exemplification or a certified copy of the proceeding or record under the seal of the court or under the hand and seal of the presiding officer of the court or coroner, as the case may be, without proof of the authenticity of the seal, or of the signature or official character of the person appearing to have signed it.

Seal

(2) A certified copy of a proceeding or record may be produced under subsection (1) without a seal where the court or person whose seal would otherwise be required certifies that there is no seal.

Presiding officer in examination out of court

(3) For the purposes of this section, where an examination is conducted out of court in the course of a proceeding in a court, the person who conducted the examination or who prepared the transcript of the examination shall be deemed to be the presiding officer of the court.

DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

(For the text of provisions repealed or amended by the Courts of Justice Act, please see the official statute volumes.)

Second, the Morden Subcommittee recommended that the examination for discovery of a person who subsequently dies should be admissible in evidence. Subsection (1) enacts a new section 48a to the Evidence Act to implement this recommendation. The section is based on sections 52, 53 and 59 of the Uniform Evidence Act.

Subsection (2) implements another recommendation of the Morden Subcommittee. It is intended to permit courts outside Ontario to take commission evidence in Ontario for purposes other than use at trial. The new Rules of Civil Procedure will permit Ontario courts to request courts in other jurisdictions to summon a witness for the purpose of taking evidence for an Ontario proceeding where the evidence will not be used at trial.

48a.-(1) In a proceeding in which the declarant of a statement or his testimony is unavailable, evidence of the statement is admissible to prove the truth of the matter asserted if it would have been admissible if the declarant had made it while testifying.

(2) A declarant or his testimony shall be considered to be unavailable in a proceeding only if the declarant,

- (a) is deceased or unfit to testify by reason of his physical or mental condition;
- (b) cannot with reasonable diligence be identified, found, brought before the court or examined out of the court's jurisdiction;
- (c) despite a court order, persists in refusing to take an oath or to make a solemn affirmation as a witness or to testify concerning the subject-matter of his statement; or
- (d) is absent from the hearing and the importance of the issue or the added reliability of his testimony does not justify the expense or inconvenience of procuring his attendance or deposition.

(3) Where clause (2)(d) applies, the court, on motion, may order the attendance of an absent declarant for cross-examination at the expense of the moving party.

(4) A statement is not admissible under subsection (1),

- (a) where it is tendered by a witness, if the witness does not have firsthand knowledge that the declarant made the statement; or
- (b) where the unavailability of the declarant or his testimony was brought about by the proponent of the statement for the purpose of preventing the declarant from attending or testifying.

(5) This section does not apply to a prosecution for an offence or a proceeding to impose punishment for contempt of court.

(6) In this section, "statement" means an oral or a recorded assertion and includes conduct that could reasonably be taken as an assertion.

(2) Subsection 60(1) of the said Act is amended by inserting after "process" in the fifth line "for a purpose for which a letter of request could be issued under the Rules of Civil Procedure".

Admissibility of statement that is not qualified

When unavailable

Order for attendance

Exception

Penal proceedings excepted

"statement" defined

Idem

s.60(1), amended

DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

R.S.O.1980,  
c.146,s.19a,  
enacted

169.--(1) The Execution Act, being chapter 146 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:

Powers of  
entry

19a.--(1) A sheriff acting under a writ of seizure and sale, a writ of delivery or a writ of sequestration may use reasonable force to enter premises other than a dwelling where he believes, on reasonable and probable grounds, that there is property liable to be taken in execution under the writ and may use reasonable force to execute the writ.

Idem  
dwelling

(2) A sheriff acting under a writ of seizure and sale, a writ of delivery or a writ of sequestration in respect of property on premises that is used as a dwelling shall not use force to enter the dwelling or execute the writ except under the authority of an order of the court by which the writ was issued, and the court may make the order where in the opinion of the court there is reasonable and probable grounds to believe that there is property on the premises that is liable to be taken in execution under the writ.

Idem  
s.29a,  
enacted  
Execution  
against partner

(2) The said Act is further amended by adding thereto the following section:

29a. Under an execution against a partner in his personal capacity, partnership assets shall not be taken in execution, but an order may be made appointing a receiver of the partner's share of profits whether already declared or accruing and of any other money that may be coming to him in respect of the partnership.

R.S.O.1980,  
c.149,  
repealed

170. The Extra-Judicial Services Act, being chapter 149 of the Revised Statutes of Ontario, 1980, is repealed.

R.S.O.1980,  
c.152,s.2(6),  
repealed

171.--(1) Subsection 2(6) of the Family Law Reform Act, being chapter 152 of the Revised Statutes of Ontario, 1980, is repealed.

Idem  
s.30,  
repealed

(2) Section 30 of the said Act is repealed.

SECTION 169

Subsection (1) replaces sections 4 and 5 of the Replevin Act with an amendment to the Execution Act intended to clarify the sheriff's power to enter premises to enforce court orders. The need for clarification was pointed out by the Ontario Law Reform Commission in its 1981 Report on the Enforcement of Judgment Debts and Related Matters, Part II, p. 110. The provision departs from the Commission's recommendation by requiring specific authorization before the sheriff may use force to enter a dwelling.

Subsection (2) transfers existing rule 551 into the Execution Act. It also implements the recommendation of the Ontario Law Reform Commission that a charging order should no longer be required to enforce a judgment against a partner's interest in partnership property and profits. The Commission recommended that this interest be available to satisfy a personal judgment against a partner only by means of receivership: Report on the Enforcement of Judgment Debts and Related Matters (1981), Part II, p. 256.

SECTION 170

The provisions of the Extra-Judicial Services Act, which will be repealed by this section, appear in sections 92 and 93 of the Courts of Justice Act.

SECTION 171

Subsection 2(6) of the Family Law Reform Act deals with the exclusion of the public from court proceedings under that Act. In future, this issue will be dealt with under section 138 of the Courts of Justice Act.

Section 30 of the Family Law Reform Act deals with the attachment of wages. In future, this matter will be dealt with by the garnishment provisions of the new Rules.

(For the text of provisions repealed or amended by the Courts of Justice Act, please see the official statute volumes.)



DRAFT COURTS OF JUSTICE ACT		COMMENTS	EXISTING PROVISIONS
R.S.O. 1980, c. 162, s. 3, amended	172. Section 3 of the <u>Fines and Forfeitures Act</u> , being chapter 162 of the Revised Statutes of Ontario, 1980, is amended by striking out "court of general sessions of the peace" in the fifth and sixth lines and inserting in lieu thereof "District Court".	SECTION 172  This is a consequential amendment related to the abolition of the courts of general sessions of the peace.	(For the text of provisions repealed or amended by the Courts of Justice Act, please see the official statute volumes.)
R.S.O. 1980, c. 187, repealed	173. The <u>General Sessions Act</u> , being chapter 187 of the Revised Statutes of Ontario, 1980, is repealed.	SECTION 173  The federal government will be asked to amend the definition of "court of criminal jurisdiction" in section 2 of the Criminal Code so that it includes, in Ontario, the District Court. This will transfer the jurisdiction of the courts of general sessions of the peace to the District Court, making the <u>General Sessions Act</u> unnecessary.	
R.S.O. 1980, c. 193, s. 1(1), amended	174. Subsection 1(1) of the <u>Habeas Corpus Act</u> , being chapter 193 of the Revised Statutes of Ontario, 1980, is amended by striking out "court of general sessions of the peace" in the third and fourth lines and inserting in lieu thereof "District Court".	SECTION 174  This is a consequential amendment related to the abolition of the courts of general sessions of the peace.	
R.S.O. 1980, c. 219, s. 19a, enacted	175.-(1) The <u>Interpretation Act</u> , being chapter 219 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:  Death of Sovereign  19a. Where a reigning Sovereign dies, no rule or construction of law shall be applied so as to prevent the continuation of any matter under the successor to the Crown as if the death had not occurred.  (2) Sections 28 and 29 of the said Act are repealed.	SECTION 175  Subsection (1) amends the Interpretation Act to replace section 131 of the Judicature Act. The new section is phrased in broader terms because of some old common law indicating that appointments made by the Sovereign terminate when the Sovereign dies. The new section is not limited to court proceedings.  Subsection (2) repeals sections 28 and 29 of the Interpretation Act. Section 28 states that appeals to the Court of Appeal shall be made in the manner prescribed by the rules. This section has been deleted as unnecessary. Section 29 of the Interpretation Act states that, where an application to a court is permitted by an Act, the application may be made by originating notice. The new Rules will provide for applications permitted by statute to be made by issuing a notice of application, so section 29 will no longer be necessary.	
Idem ss. 28, 29, repealed			

DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

Idem  
s.30, par.31, amended  
(3) Paragraph 31 of section 30 of the said Act is amended by striking out "Judicature Act" in the second line and inserting in lieu thereof "Courts of Justice Act, 1983".

(For the text of provisions repealed or amended by the Courts of Justice Act, please see the official statute volumes.)

Subsections (3) and (4) replace existing references to the Judicature Act with references to the Courts of Justice Act.

Idem  
s.31, amended  
(4) Section 31 of the said Act is amended by striking out "Judicature Act" in the first line and inserting in lieu thereof "Courts of Justice Act, 1983".

R.S.O.1980, c.222, repealed  
176. The Judges' Orders Enforcement Act, being chapter 222 of the Revised Statutes of Ontario, 1980, is repealed.

SECTION 176  
With the abolition of persona designata by section 90 of the Courts of Justice Act, the Judges' Orders Enforcement Act will no longer serve any purpose.

R.S.O.1980, c.223; 1981,c.23; 1983,c.3, repealed  
177.--(1) The Judicature Act, being chapter 223 of the Revised Statutes of Ontario, 1980, the Judicature Amendment Act, 1981, being chapter 23, and the Judicature Amendment Act, 1983, being chapter 3, are repealed.

SECTION 177  
Subsection (1) repeals the Judicature Act.

Suitors Fee Fund Account abolished  
(2) The Suitors Fee Fund Account is abolished and all money in the account shall be paid into the Consolidated Revenue Fund.

Subsection (2) abolishes the Suitors Fee Fund Account established by section 114 of the Judicature Act. In light of the availability of legal aid, the Fund is no longer used. Subsection (2) requires the money still in the Fund (approximately \$2,600) to be paid into the Consolidated Revenue Fund.

R.S.O.1980, c.224, s.11, repealed  
178. Section 11 of the Judicial Review Procedure Act, being chapter 224 of the Revised Statutes of Ontario, 1980, is repealed.

SECTION 178  
The first part of section 11 of the Judicial Review Procedure Act is unnecessary since statutory provisions prevail over rules. The second part of the section is unnecessary because it adds nothing to the general power to make rules contained in section 88 of the Courts of Justice Act.

R.S.O.1980, c.226, s.5(1)(a)(ii), repealed,  
179.--(1) Subclause 5(1)(a)(ii) of the Juries Act, being chapter 226 of the Revised Statutes of Ontario, 1980, is repealed.

SECTION 179  
Subsections (1), (3) to (11) and (14) delete references in the Juries Act to courts of general sessions of the peace, since the jurisdiction of those courts will be assumed by the District Court.

Idem  
s.8(2), amended  
(2) Subsection 8(2) of the said Act is amended by striking out "is designated in a county or district under section 130 of the Judicature Act" in the first and second lines and inserting in lieu thereof "is a designated court under clause 129(1)(a) of the Courts of Justice Act, 1983".

Subsection (2) replaces a reference to the Judicature Act with a reference to the corresponding provision in the Courts of Justice Act.

DRAFT COURTS OF JUSTICE ACT		COMMENTS	EXISTING PROVISIONS
Idem s.12(1), amended	(3) Subsection 12(1) of the said Act is amended by striking out "or of the court of general sessions of the peace" in the fourth and fifth lines.		(For the text of provisions repealed or amended by the <u>Courts of Justice Act</u> , please see the official statute volumes.)
Idem s.14(2), amended	(4) Subsection 14(2) of the said Act is amended by striking out "or court of general sessions of the peace" in the third line.		
Idem s.15, repealed	(5) Section 15 of the said Act is repealed.		
Idem s.23(4), amended	(6) Subsection 23(4) of the said Act is amended by striking out "of the Supreme Court for the trial of criminal matters and proceedings, or in the case of a sittings of the court of general sessions of the peace" in the first, second and third lines and inserting in lieu thereof "for the hearing of criminal proceedings".		
Idem s.24(2), amended	(7) Subsection 24(2) of the said Act is amended by striking out "or the court of general sessions of the peace, or both" in the third and fourth lines.		
Idem s.26(1), amended	(8) Subsection 26(1) of the said Act is amended by striking out "or court of general sessions of the peace" in the fourth and fifth lines.		
Idem s.28, amended	(9) Section 28 of the said Act is amended by striking out "courts of general sessions of the peace and of" in the sixth line.		
Idem s.35, amended	(10) Section 35 of the said Act is amended by striking out "court of general sessions of the peace, and of the" in the second line.		
Idem s.39(1)(a), amended	(11) Clause 39(1)(a) of the said Act is amended by striking out "the court of general sessions of the peace or of" in the second line.		



DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

Idem  
s.42(2),  
amended  
(12) Subsection 42(2) of the said Act is amended by striking out "or clerk of the peace" in the first line.

Idem  
s.43(d),  
amended  
(13) Clause 43(d) of the said Act is amended by striking out "clerk of the peace" in the first line.

Idem  
s.46,  
amended  
(14) Section 46 of the said Act is amended by striking out "and the court of general sessions of the peace" in the second and third lines.

R.S.O.1980,  
c.230,s.135(1),  
repealed

180. Subsection 135(1) of the Land Titles Act, being chapter 230 of the Revised Statutes of Ontario, 1980, is repealed.

R.S.O.1980,  
c.237,s.11,  
repealed

181. Section 11 of the Libel and Slander Act, being chapter 237 of the Revised Statutes of Ontario, 1980, is repealed.

R.S.O.1980,  
c.258,  
repealed

182. The Matrimonial Causes Act, being chapter 258 of the Revised Statutes of Ontario, 1980, is repealed.

Subsections (12) and (13) delete references in the Juries Act to the clerk of the peace. The clerk of the peace no longer has any duties under that Act.

SECTION 180

Subsection 135(1) of the Land Titles Act prevents a certificate of pending litigation from being registered in respect of land governed by that Act. A caution may be obtained but only on the grounds set out in the Land Titles Act. These provisions are being repealed, since they are inconsistent with subsection 110(2) of the Courts of Justice Act.

SECTION 181

Section 11 of the Libel and Slander Act permits a defendant to a libel action to pay money into court and provides that the payment has the same effect as payment into court in other cases. The new Rules will delete the existing rules dealing with payment into court and will substitute an offer to settle procedure. The same offer to settle procedure would be available in libel actions.

SECTION 182

Section 1 of the Matrimonial Causes Act, repealed by this section, is replaced by section 119 of the Courts of Justice Act.

Section 2 of the Matrimonial Causes Act, which deals with appeals in actions for the annulment of a marriage, is not being re-enacted. The same rules that apply to all other appeals will apply to nullity actions.

Section 3 of the Act, which deals with rules of court for matrimonial causes, is not being re-enacted. Rules of court may be made under the authority contained in the Courts of Justice Act.

\* Section 4 of the Act, which creates the office of Her Majesty's Proctor, is not being re-enacted. Under the new Rules, the duties of the Queen's Proctor will be exercised by the Attorney General.

(For the text of provisions repealed or amended by the Courts of Justice Act, please see the official statute volumes.)

DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

R.S.O.1980, c.262, s.45, repealed	183. Section 45 of the <u>Mental Health Act</u> , being chapter 262 of the Revised Statutes of Ontario, 1980, is repealed.	SECTION 183  Section 45 of the <u>Mental Health Act</u> deals with service of documents on patients in <u>psychiatric facilities</u> . This matter will be covered by the new Rules.	(For the text of provisions repealed or amended by the Courts of Justice Act, please see the official statute volumes.)
R.S.O.1980, c.264, s.6, amended	184.-(1) Section 6 of the <u>Mental Incompetency Act</u> , being chapter 264 of the Revised Statutes of Ontario, 1980, is amended by striking out "the confirmation of" in the fourth and fifth lines and by striking out "confirmation" in the fifth and sixth lines and inserting in lieu thereof "propounding".  (2) Subsection 12(1) of the said Act is amended by striking out the words following clause (c) in the eleventh, twelfth, thirteenth and fourteenth lines.  (3) Subsection 12(2) of the said Act is repealed.  (4) Subsection 12(3) of the said Act is amended by striking out "and any such appointment need not be confirmed" in the fourth line.  (5) Section 38 of the said Act is repealed.	SECTION 184  The Morden Subcommittee recommended the repeal of the provisions in the <u>Mental Incompetency Act</u> that require an order of a county or district court judge to be confirmed by a Supreme Court judge. This section implements that recommendation.	
Idem s.12(1), amended			
Idem s.12(2), repealed			
Idem s.12(3), amended			
Idem s.38, repealed			
R.S.O.1980, c.304, s.13, repealed	185. Section 13 of the <u>Municipal Arbitrations Act</u> , being chapter 304 of the Revised Statutes of Ontario, 1980, is repealed.	SECTION 185  Section 13 of the <u>Municipal Arbitrations Act</u> adds nothing to the general rule-making authority of section 88 of the <u>Courts of Justice Act</u> .	
R.S.O.1980, c.315, s.1, repealed	186. Section 1 of the <u>Negligence Act</u> , being chapter 315 of the Revised Statutes of Ontario, 1980, is repealed.	SECTION 186  Section 1 of the <u>Negligence Act</u> defines "action" to include a counterclaim. However, it does not include a crossclaim or a third party claim, which are both "actions" in the new Courts of Justice Act and the new Rules. This section repeals the definition section in the <u>Negligence Act</u> , so that the interpretations used for the Courts of Justice Act can be applied to the <u>Negligence Act</u> .	

DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

R.S.O. 1980,  
c. 369, s. 3(1),  
amended

187.-(1) Subsection 3(1) of the Partition Act,  
being chapter 369 of the Revised Statutes of  
Ontario, 1980, is amended by striking out "take  
proceedings" in the third line and inserting in  
lieu thereof "bring an action or make an  
application".

Idem  
s. 4(1),  
amended

(2) Subsection 4(1) of the said Act is amended  
by striking out "application" in the fourth line  
and inserting in lieu thereof "motion".

Idem  
s. 4(3),  
amended

(3) Subsection 4(3) of the said Act is amended  
by striking out "application" in the third line and  
inserting in lieu thereof "motion".

Idem  
s. 5(1),  
amended

(4) Subsection 5(1) of the said Act is amended  
by striking out "an action or proceeding" in the  
first line and in the second line and inserting in  
lieu thereof in each instance "a proceeding".

Idem  
s. 7(1),  
amended

(5) Subsection 7(1) of the said Act is amended  
by striking out "proceedings under this Act are" in  
the first line and inserting in lieu thereof "an  
application under this Act is".

R.S.O. 1980,  
c. 391,  
ss. 3(1, 2, 7),  
6(1), 7, 12(2),  
50, 53,  
amended

188. Subsections 3(1), (2) and (7), subsection  
6(1), section 7, subsection 12(2) and sections 50  
and 53 of the Private Sanitaria Act, being chapter  
391 of the Revised Statutes of Ontario, 1980, are  
amended by striking out "clerk of the peace" in  
each instance where it occurs and inserting in lieu  
thereof "Crown attorney".

SECTION 187

Subsection (1) amends the Partition Act to make clear  
that an order for partition may be sought in either an  
action or an application.

Subsections (2) to (4) amend language in the Partition  
Act to conform with the new terminology of the Courts of  
Justice Act.

Subsection (5) amends section 7 of the Partition Act  
to make clear that it applies only to applications.

SECTION 188

This section amends the Private Sanitaria Act so that  
the Crown attorney may continue to perform his functions  
under that Act.

(For the text of provisions repealed or  
amended by the Courts of Justice Act, please  
see the official statute volumes.)



DRAFT COURTS OF JUSTICE ACT		COMMENTS	EXISTING PROVISIONS
R.S.O. 1980, c.393, s.3, amended	189.--(1) Section 3 of the <u>Proceedings Against the Crown Act</u> , being chapter 393 of the Revised Statutes of Ontario, 1980, is amended by striking out "Except as provided in section 29" in the first line.	SECTION 189  Subsection (1) corrects a typographical error in the Revised Statutes of 1980.	(For the text of provisions repealed or amended by the Courts of Justice Act, please see the official statute volumes.)
Idea s.14, re-enacted	(2) Section 14 of the said Act is repealed and the following substituted therefor:	Subsection (2) amends section 14 of the Proceedings Against the Crown Act so that service of documents on the Crown will conform with a provision in the new Rules dealing with service of documents on the Attorney General.	
Service on the Crown	14. In proceedings under this Act, a document to be served personally on the Crown shall be served by leaving a copy of the document with a solicitor in the Crown Law Office-Civil of the Ministry of the Attorney General.		
Idea s.26, re-enacted	(3) Section 26 of the said Act is repealed and the following substituted therefor:	Subsection (3) amends section 26 of the Proceedings Against the Crown Act to permit settlements of court proceedings to be paid out of the Consolidated Revenue Fund without the need to obtain a court order.	
Payment by Crown	26. The Treasurer of Ontario shall pay out of the Consolidated Revenue Fund the amount payable by the Crown under an order of a court that is final and not subject to appeal or under a settlement of a proceeding in a court.		
R.S.O. 1980, c.398, amended	190.--(1) The title to the <u>Provincial Courts Act</u> , being chapter 398 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:	SECTION 190  Most of the provisions of the Provincial Courts Act will be incorporated into Part IV of the Courts of Justice Act. However, there are several provisions of the Provincial Courts Act, dealing with observation and detention homes, that will not be included in the Courts of Justice Act. These provisions are administered by the Ministry of Community and Social Services. This section changes the name of the Provincial Courts Act to the Juvenile Observation and Detention Homes Act and repeals the provisions of that Act that are no longer required.	
Idea ss.1-26, 31-33, 34(1)(a-f, l, m), repealed	JUVENILE OBSERVATION AND DETENTION HOMES ACT  (2) Sections 1 to 26, sections 31 to 33 and clauses 34(1)(a), (b), (c), (d), (e), (f), (l) and (m) of the said Act are repealed.		
R.S.O. 1980, c.397; 1982, c.58, repealed	191. The <u>Provincial Court (Civil Division) Act</u> , being chapter 397 of the Revised Statutes of Ontario, 1980 and the <u>Provincial Court (Civil Division) Project Amendment Act, 1982</u> , being chapter 58, are repealed.	SECTION 191  The provisions of the Provincial Court (Civil Division) Act are incorporated in sections 80 to 83 of the Courts of Justice Act.	

DRAFT COURTS OF JUSTICE ACT

R.S.O.1980,  
c.400,s.76(1),  
amended

192.--(1) Subsection 76(1) of the Provincial Offences Act, being chapter 400 of the Revised Statutes of Ontario, 1980, is amended by inserting after "prescribed" in the second line "by or under any Act".

Idem

s.122,  
amended

(2) Section 122 of the said Act is amended by adding thereto the following subsection:

(4) No appeal lies from a decision on a motion for leave to appeal under subsection (1).

R.S.O.1980,  
c.416,  
repealed

193. The Public Officers' Fees Act, being chapter 416 of the Revised Statutes of Ontario, 1980, is repealed.

R.S.O.1980,  
c.427,  
repealed

194. The Quieting Titles Act, being chapter 427 of the Revised Statutes of Ontario, 1980, is repealed.

R.S.O.1980,  
c.432,s.7,  
repealed

195. Section 7 of the Reciprocal Enforcement of Judgments Act, being chapter 432 of the Revised Statutes of Ontario, 1980, is repealed.

R.S.O.1980,  
c.449,  
repealed

196. The Replevin Act, being chapter 449 of the Revised Statutes of Ontario, 1980, is repealed.

R.S.O.1980,  
c.470,s.2,  
re-enacted

197.--(1) Section 2 of the Sheriffs Act, being chapter 470 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Enforcement  
of court orders

2. Except where a statute provides otherwise, orders of a court enforceable in Ontario shall be directed to the sheriff for enforcement.

COMMENTS

SECTION 192

Subsection (1) corrects a provision of the Provincial Offences Act that, because of the definition of "prescribed" in that Act, appears to suggest that rules of court may prescribe limitation periods. This was not the intention.

Subsection (2) is intended to make clear that clause 17(3)(b) of the Courts of Justice Act does not provide for an appeal from a decision of a single judge of the Court of Appeal under section 122 of the Provincial Offences Act.

SECTION 193

The Public Officers' Fees Act deals with officers involved in the administration of justice who are paid by fees. There are very few such officers remaining. Those that do remain are dealt with by other legislation or regulations. Therefore, the Public Officers' Fees Act is being repealed.

SECTION 194

The Certification of Titles Act and provisions in the new Rules make the Quieting Titles Act unnecessary. Therefore, the Act is being repealed and the new Rules will not contain any rules dealing with quieting titles.

SECTION 195

Section 7 of the Reciprocal Enforcement of Judgments Act adds nothing to the rule-making authority contained in the Courts of Justice Act.

SECTION 196

The main provisions of the Replevin Act, repealed by this section, are dealt with in subsections 111(1) and 169(1) of the Courts of Justice Act.

SECTION 197

Subsection (1) replaces an obsolete provision in the Sheriffs Act with a section derived from section 122 of the Judicature Act. The new provision states that, except where a statute provides otherwise, orders of a court enforceable in Ontario shall be directed to the sheriff for enforcement. Subsection 37(2) of the Children's Law Reform Act is an example of a provision permitting orders to be directed to persons other than the sheriff. The subsection permits an order to direct a police force to locate, apprehend and return a child who is being unlawfully withheld to the person entitled to custody of the child.

EXISTING PROVISIONS

(For the text of provisions repealed or amended by the Courts of Justice Act, please see the official statute volumes.)

DRAFT COURTS OF JUSTICE ACT		COMMENTS	EXISTING PROVISIONS
<p><b>Idem</b> s.11(3), repealed</p> <p><b>Idem</b> s.12, re-enacted</p> <p>Office hours</p>	<p>(2) Subsection 11(3) of the said Act is repealed.</p> <p>(3) Section 12 of the said Act is repealed and the following substituted therefor:</p> <p>12. Every sheriff's office shall be open for business on the days and during the hours that court offices are required to be open under the Rules of Civil Procedure.</p> <p>(4) Section 17 of the said Act is amended by striking out "the court of general sessions of the peace" in the third line.</p>	<p>Subsection (2) repeals an obsolete provision. Fees for duties performed by sheriffs are prescribed by regulations under the <u>Administration of Justice Act</u>.</p> <p>Subsection (3) is amended to ensure that the sheriff's office will be open at the same time as the court offices.</p> <p>Subsection (4) is a consequential amendment related to the abolition of the courts of general sessions of the peace.</p>	<p>(For the text of provisions repealed or amended by the <u>Courts of Justice Act</u>, please see the official statute volumes.)</p>
<p>R.S.O.1980, c.476,ss.5,10, repealed</p> <p><b>Idem</b> s.11(2), re-enacted; s.11(3-6), repealed</p> <p>Application of 1983,c..., ss.54-60</p>	<p>198.-(1) Sections 5 and 10 of the <u>Small Claims Courts Act</u>, being chapter 476 of the Revised Statutes of Ontario, 1980, are repealed.</p> <p>(2) Subsections 11(2), (3), (4), (5) and (6) of the said Act are repealed and the following substituted therefor:</p> <p>(2) Sections 54 to 60 of the <u>Courts of Justice Act</u>, 1983 apply with necessary modifications to a judge appointed under this section.</p> <p>(3) Sections 12, 13, 27, 28, 35, 37, 49, 51, 56, 68, 71, 112, 113 and 115 of the said Act are repealed.</p>	<p>SECTION 198</p> <p>Subsection (1) repeals sections 5 and 10 of the <u>Small Claims Courts Act</u>. Section 5 is replaced by section 147 of the <u>Courts of Justice Act</u>. Section 10 is obsolete.</p> <p>Subsection (2) repeals several subsections of section 11 of the <u>Small Claims Courts Act</u>. Subsection 11(2) is replaced by section 89 of the <u>Courts of Justice Act</u>. Subsection 11(3) is an administrative matter that does not require statutory attention. A new subsection 11(2) of the <u>Small Claims Courts Act</u> is enacted to replace subsections 11(4) to (6) of the existing Act.</p> <p>Subsection (3) repeals several provisions of the <u>Small Claims Courts Act</u>. Sections 12 and 13 are replaced by the new subsection 11(2) of the <u>Small Claims Courts Act</u> that is enacted by subsection (2) of this section. Sections 27, 28 and 35 of the <u>Small Claims Courts Act</u> are obsolete. Section 37 of the Act is replaced by subsection 95(3) of the <u>Courts of Justice Act</u>. Sections 49 and 51 of the <u>Small Claims Courts Act</u> are obsolete. Sections 56, 68, 71, 112, 113 and 115 of the Act are replaced by, respectively, sections 131, 121 and 117 of the <u>Courts of Justice Act</u>, clause 15(2)(b) of the <u>Courts of Justice Act</u> and provisions in the new Rules, section 137 of the <u>Courts of Justice Act</u> and subsections 126(4) to (7) of the <u>Courts of Justice Act</u>.</p>	



DRAFT COURTS OF JUSTICE ACT

Idem

s. 116(2),  
amended

(4) Subsection 116(2) of the said Act is amended by striking out "with interest thereon from the date of the order or of the entry of the judgment" in the fifth and sixth lines and by striking out "costs and interest" in the seventh line and inserting in lieu thereof "and costs".

Idem

s. 116(3),  
repealed

Idem

ss. 141-150,  
re-enacted;  
s. 150a,  
enacted

(5) Subsection 116(3) of the said Act is repealed.  
(6) Sections 141, 142, 143, 144, 145, 146, 147, 148, 149 and 150 of the said Act are repealed and the following substituted therefor:

Request for  
garnishment

141. A judgment creditor who seeks to enforce a judgment by garnishment shall file with the clerk of the court in which the judgment was recovered or the clerk of the court to which the judgment has been transcribed a request for garnishment together with an affidavit stating,

- (a) the date of the judgment and the amount awarded;
- (b) the rate of post-judgment interest payable;
- (c) the date and amount of any payment received since the judgment was granted;
- (d) the amount owing, including post-judgment interest;
- (e) the name and address of each person to whom a notice of garnishment is to be directed;
- (f) that the judgment creditor believes that those persons are or will become indebted to the judgment debtor, and the grounds for the belief;
- (g) such particulars of the debts as are known to the judgment creditor;
- (h) where a person to whom a notice of garnishment is to be directed is not in Ontario, that the judgment debtor is entitled to sue that person in Ontario to recover the debt, and the basis of the entitlement to sue in Ontario; and
- (i) where a person to whom a notice of garnishment is to be directed is not then indebted but will become indebted to the judgment debtor, such particulars of the date on and the circumstances under which the debt will arise as are known to the judgment creditor.

COMMENTS

Subsections (4) and (5) amend section 116 of the Small Claims Courts Act to eliminate the implication that interest on small claims court orders only runs when an execution is issued for distress and sale of goods and chattels. In future, all small claims court orders will accumulate postjudgment interest under section 132 of the Courts of Justice Act.

Subsection (6) repeals the garnishment provisions of the Small Claims Courts Act and replaces them with new provisions modelled on the garnishment rules in the new Rules.

EXISTING PROVISIONS

(For the text of provisions repealed or amended by the Courts of Justice Act, please see the official statute volumes.)

DRAFT COURTS OF JUSTICE ACT		COMMENTS	EXISTING PROVISIONS
Notice of garnishment	142.--(1) On the filing of the request and affidavit required by section 141, the clerk shall issue notices of garnishment in the prescribed form naming as garnishees the persons named in the affidavit.		(For the text of provisions repealed or amended by the <u>Courts of Justice Act</u> , please see the official statute volumes.)
Service	(2) Every notice of garnishment shall be served on the judgment debtor and the garnishee,  (a) by ordinary mail; or  (b) by personal service.		
Idem	(3) A notice of garnishment may be served outside Ontario where the affidavit required by subsection (1) contains the material required by clause 141(h).		
Idem	(4) Where the garnishee is a bank, trust company, loan corporation, credit union, caisse populaire or The Province of Ontario Savings Office, the garnishee shall be served at the branch at which the debt is payable.		
Debts payable	143.--(1) On being served with a notice of garnishment, the garnishee is liable to pay to the clerk of the court any debt of the garnishee to the judgment debtor, up to the amount shown in the notice, at the time the debt becomes payable.		
Idem	(2) For the purposes of subsection (1), a debt of the garnishee to the judgment debtor includes a debt payable at the time the notice of garnishment is served and a debt,  (a) payable within six years after the notice is served; or  (b) payable on the fulfilment of a term or condition within six years after the notice is served.		
Where debt admitted	144. A garnishee who admits owing a debt to the judgment debtor shall pay it to the clerk of the court in the manner prescribed by the notice of garnishment.		
Distribution among all creditors with garnishments	145. Where the clerk of a court has issued notices of garnishment in respect of a debtor at the request of more than one judgment creditor and the clerk receives payment under any of the notices of garnishment, the clerk shall distribute the payment equally among the judgment creditors who have filed a request for garnishment and are not paid in full.		

DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

(For the text of provisions repealed or amended by the Courts of Justice Act, please see the official statute volumes.)

Where debt  
disputed

146. A garnishee who,

- (a) disputes the existence or the amount of the debt;
- (b) has notice of an assignment or encumbrance of the debt;
- (c) makes payment of an amount that is less than the amount shown in the notice; or
- (d) wishes for any other reason to dispute the garnishment,

shall, within ten days after service of the notice of garnishment, serve on the judgment creditor and the judgment debtor and file with the court a garnishee's statement in the prescribed form setting out the particulars.

Order of  
court on  
motion

147. On motion by a judgment creditor, judgment debtor, garnishee or any other interested person, the court may,

- (a) order an assignee or encumbrancer of a debt to appear and state the nature and particulars of his claim;
- (b) determine the liability of the garnishee or judgment debtor;
- (c) vary or suspend periodic payments under a notice of garnishment; or
- (d) determine any other matter in relation to a notice of garnishment, and the court may proceed in a summary manner or may direct the trial of an issue for that purpose.

Default  
order

148. Where the garnishee does not pay to the clerk of the court the amount set out in the notice to garnishee and does not serve or file a garnishee's statement, the judgment creditor is entitled to an order against the garnishee for payment of the amount set out in the notice, unless the judge orders otherwise.

Liability of  
garnishee

149.-(1) Payment of a debt by a garnishee in accordance with a notice of garnishment is a valid discharge of the debt as between the garnishee and the judgment debtor, to the extent of the payment.

Idem

(2) Where, after service of a notice of garnishment, the garnishee pays a debt attached by the notice to a person other than the clerk of the court, the garnishee remains liable to pay the debt in accordance with the notice.

Notice of  
termination of  
garnishment

150. When the amount owing under a judgment has been paid, the judgment creditor shall forthwith serve a notice of termination of garnishment in the prescribed form on the garnishee and file a copy with the clerk of the court.



DRAFT COURTS OF JUSTICE ACT

COMMENTS

EXISTING PROVISIONS

Distribution  
of payments

150a. The clerk shall distribute to a judgment creditor payments received under a notice of garnishment as they are received, unless the total amount of the payments is less than \$20 in which case the clerk shall make a distribution when the total amount is \$20 or more or when three months have passed since the last payment, whichever is earlier.

Idea

(7) Section 151 of the said Act is amended by adding thereto the following subsection:

s.151,  
amended

Interest

(8) The judge may order that no interest is payable in respect of money owing under a consolidation order that is not in default.

Idea

(8) Sections 173, 178, 179, 180 and 183 of the said Act are repealed.

ss.173,178,  
179,180,183,  
repealed

R.S.O.1980,  
c.478,s.14,  
repealed

199.-(1) Section 14 of the Solicitors' Act, being chapter 478 of the Revised Statutes of Ontario, 1980, is repealed.

Idea

s.35a,  
enacted

(2) The said Act is amended by adding thereto the following section:

Solicitors' Charging Orders

Charge on  
property  
for costs

35a.-(1) Where a solicitor has been employed to prosecute or defend a proceeding in the Supreme Court or the District Court, the court may, on motion, declare the solicitor to be entitled to a charge on the property recovered or preserved through the instrumentality of the solicitor for the solicitor's fees, costs, charges and disbursements in the proceeding.

Conveyance  
to defeat  
is void

(2) A conveyance made to defeat or which may operate to defeat a charge under subsection (1) is, unless made to a person who purchased the property for value in good faith and without notice of the charge, void as against the charge.

Assessment  
and recovery

(3) The court may order that the solicitor's bill for services be assessed in accordance with this Act and that payment shall be made out of the charged property.

Subsection (7) adds a new subsection to section 151 of the Small Claims Courts Act to permit a judge to order that no interest runs on money owing under a consolidation order that is not in default.

Subsection (8) repeals several sections of the Small Claims Courts Act. Sections 173, 178, 179 and 180 are replaced by, respectively, section 145, subsections 94(2) and (3), subsection 94(4) and subsection 94(3) of the Courts of Justice Act. Section 183 of the Small Claims Courts Act is repealed as obsolete.

SECTION 199

Subsection (1) repeals section 14 of the Solicitors Act. This section adds nothing to the general rule-making authority in section 88 of the Courts of Justice Act.

Subsection (2) transfers existing rule 696 to the Solicitors Act. The Ontario Law Reform Commission recommended that the power to give a solicitor a charge on property recovered or preserved through his efforts should have a statutory basis: Report on the Solicitors Act (1973), pp. 36 - 37.

DRAFT COURTS OF JUSTICE ACT

R.S.O. 1980, c. 491, s. 3, repealed  
200.-(1) Section 3 of the Surrogate Courts Act, being chapter 491 of the Revised Statutes of Ontario, 1980, is repealed.

Idem  
s. 6, amended  
(2) Section 6 of the said Act is amended by striking out "\$100" in the fourth line and inserting in lieu thereof "\$10,000".

Idem  
s. 10, repealed  
(3) Section 10 of the said Act is repealed.

Idem  
s. 12, amended  
(4) Section 12 of the said Act is amended by adding thereto the following subsection:

Deputy registrars  
(1a) With the approval of the Attorney General, every surrogate court registrar may appoint a deputy surrogate court registrar who may exercise and perform all the powers and duties of the surrogate court registrar.

Idem  
ss. 13, 16, 19, 30, repealed  
(5) Sections 13, 16, 19 and 30 of the said Act are repealed.

Idem  
s. 80, re-enacted  
(6) Section 80 of the said Act is repealed and the following substituted therefor:

Rules of Civil Procedure  
80.-(1) Subject to the approval of the Lieutenant Governor in Council, the Rules Committee of the Supreme and District Courts may make rules for the surrogate courts in relation to the practice and procedure of the courts and may make rules for such courts, even though they alter or continue the substantive law, in relation to,

- (a) conduct of proceedings in the courts;
- (b) joinder of claims and parties;
- (c) commencement of proceedings and service of process in or outside Ontario;
- (d) duties of registrars and other officers;
- (e) costs of proceedings, including security for costs;
- (f) any matter that is referred to in an Act as provided for by rules of court,

and, where an Act contains provisions in respect of practice and procedure, the Rules Committee of the Supreme and District Courts may make rules supplementing those provisions.

COMMENTS

SECTION 200

Section 3 of the Surrogate Courts Act, repealed by this section, is replaced by section 147 of the Courts of Justice Act.

Subsection (2) increases the fine that may be imposed for contempt by a surrogate court to \$10,000. This change corresponds to a similar change made for the District Court in subsection 34(2) of the Courts of Justice Act.

Section 10 of the Surrogate Courts Act is replaced by section 89 of the Courts of Justice Act.

Subsection (4) amends section 12 of the Surrogate Courts Act to include part of section 85 of the Judicature Act.

Subsection (5) repeals several provisions of the Surrogate Courts Act. Sections 13, 16, 19 and 30 of the Act are replaced by, respectively, section 89 of the Courts of Justice Act, a provision in the new Rules, subsection 94(4) of the Courts of Justice Act and section 115 of the Courts of Justice Act.

Subsection (6) replaces the rule-making authority for the surrogate courts with a provision modelled on section 88 of the Courts of Justice Act. The new provision also states that the Rules of Civil Procedure will apply to surrogate courts, except in so far as the rules of the surrogate courts otherwise provide.

EXISTING PROVISIONS

(For the text of provisions repealed or amended by the Courts of Justice Act, please see the official statute volumes.)

DRAFT COURTS OF JUSTICE ACT	COMMENTS	EXISTING PROVISIONS
<p>Application of Rules of Civil Procedure</p>	<p>(2) The Rules of Civil Procedure apply to surrogate courts, except in so far as the rules of the surrogate courts otherwise provide.</p>	<p>(For the text of provisions repealed or amended by the <u>Courts of Justice Act</u>, please see the official statute volumes.)</p>
<p>R.S.O.1980, c.512, s.37(7), amended</p>	<p>201.--(1) Subsection 37(7) of the <u>Trustee Act</u>, being chapter 512 of the Revised Statutes of Ontario, 1980, is amended by striking out "Registrar of the Supreme Court" in the second line and inserting in lieu thereof "Surrogate Clerk for Ontario".</p>	
<p>Idem s.37(8), amended</p>	<p>(2) Subsection 37(8) of the said Act is amended by striking out "Registrar of the Supreme Court" in the second line and inserting in lieu thereof "Surrogate Clerk for Ontario".</p>	
<p>Idem s.38(3-6), repealed</p>	<p>(3) Subsections 38(3), (4), (5) and (6) of the said Act are repealed.</p>	
<p>R.S.O.1980, c.515; 1982, c.20, s.5; 1982, c.21, repealed</p>	<p>202. The <u>Unified Family Court Act</u>, being chapter 515 of the Revised Statutes of Ontario, 1980, section 5 of the <u>Children's Law Reform Amendment Act</u>, 1982, being chapter 20 and the <u>Unified Family Court Amendment Act</u>, 1982, being chapter 21, are repealed.</p>	
<p>R.S.O.1980, c.523, repealed</p>	<p>203. The <u>Vexatious Proceedings Act</u>, being chapter 523 of the Revised Statutes of Ontario, 1980, is repealed.</p>	<p>SECTION 201</p> <p>Subsections (1) and (2) amend the <u>Trustee Act</u> to replace references to the Registrar of the Supreme Court with references to the Surrogate Clerk for Ontario.</p> <p>Subsection (3) repeals provisions of the <u>Trustee Act</u> that will appear in the new Rules.</p> <p>SECTION 202</p> <p>The provisions of the <u>Unified Family Court Act</u> are incorporated in Part III of the <u>Courts of Justice Act</u>.</p> <p>SECTION 203</p> <p>The provisions of the <u>Vexatious Proceedings Act</u>, repealed by this section, are dealt with in section 143 of the <u>Courts of Justice Act</u>.</p> <p>SECTION 204</p> <p>If forms are required under the <u>Woodmen's Lien for Wages Act</u>, they may be prescribed under section 22 of the <u>Interpretation Act</u>.</p>
<p>R.S.O.1980, c.537, s.39, repealed</p>	<p>204. Section 39 of the <u>Woodmen's Lien for Wages Act</u>, being chapter 537 of the Revised Statutes of Ontario, 1980, is repealed.</p>	



DRAFT COURTS OF JUSTICE ACT		EXISTING PROVISIONS	
COMMENTS		COMMENTS	
Commencement	205. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.	SECTION 205  This section provides that the Courts of Justice Act will come into force on proclamation. The date depends on two major factors. The new Rules of Civil Procedure must be completed and approved by the Rules Committee and, after this is done, there will be a period of several months before they come into force so that members of the legal profession can learn the new provisions. Second, federal amendments will be required to implement the new District Court of Ontario.	
	206. The short title of this Act is the Courts of Justice Act, 1983.		
Short title		SECTION 206  This section provides the short title.	



PART B: DELETED PROVISIONS





DELETED PROVISIONS

Judicature Act:

1. In this Act,

- (b) "cause" includes an action, suit or other original proceeding between a plaintiff and a defendant;
- (c) "county" includes a district;
- (d) "county court" includes a district court;
- (e) "county town" includes a district town;
- (f) "Court of Appeal" means the Court of Appeal for Ontario;
- (h) "Divisional Court" means the Divisional Court of the High Court;
- (i) "finance committee" means the finance committee appointed by the Lieutenant Governor in Council under this Act;
- (j) "High Court" means the High Court of Justice for Ontario;
- (k) "judge" includes a chief justice, an associate chief justice, an *ex officio* judge and a supernumerary judge;
- (m) "master" means a Master of the Supreme Court and includes the Senior Master;
- (n) "matter" includes every proceeding in the court not in a cause;
- (o) "party" includes a person served with notice of or attending a proceeding, although not named on the record;
- (p) "petitioner" includes a person making an application to the court, either by petition, motion or summons, otherwise than as against a defendant;
- (r) "pleading" includes a petition or summons, the statement in writing of the claim or demand of a plaintiff, of the defence of a defendant thereto, and of the reply of the plaintiff to a counter-claim of a defendant;

COMMENTS

JUDICATURE ACT - DELETED PROVISIONS

SECTION 1

Clauses 1(b), (c), (d), (e), (r), (s) and (t) of the Judicature Act have been deleted because these words are not used in the Courts of Justice Act or are not used in a sense beyond their ordinary meaning.

Clauses 1(f), (h), (i), (j), (k), (m), (n), (o), (p), (u) and (v) have been deleted as unnecessary. The meaning of these words should be clear from the context in which they are used.

DELETED PROVISIONS

Judicature Act:

1.-(s) "proper officer", where the expression is used with respect to a duty to be discharged under this Act or the rules and the duty has been discharged by a particular officer, means that officer and, where the expression is used in respect of a new duty under this Act or the rules, means the officer to whom the duty is assigned by this Act or by the rules, or, if it is not assigned to any officer, means such officer as is from time to time directed to discharge the duty, if it relates to the Court of Appeal, by the Chief Justice of Ontario or, if it relates to the High Court, by the Chief Justice of the High Court;

(t) "rules" means the rules of court;

(u) "Rules Committee" means the Rules Committee established under this Act;

(v) "Supreme Court" means the Supreme Court of Ontario.

10.-(2) The oath shall be administered to a chief justice before the Lieutenant Governor in Council, to a justice of appeal by the Chief Justice of Ontario, and to a judge of the High Court by the Chief Justice of the High Court, unless the Lieutenant Governor in Council in any case otherwise directs, and in that event before such officer or functionary and in such manner as the Lieutenant Governor in Council may direct.

11.-(4) Where a judge who has heard a cause, action or matter in the Court of Appeal or Divisional Court is not present when the judgment of the court is delivered, his written judgment may be read by one of the other judges and has the same effect as if he were present.

COMMENTS

SECTION 10

Subsection 10(2) has been deleted as unnecessary. The question of who administers the oath of office to a judge is a matter for agreement between the Government and the judges; it does not require statutory attention.

SECTION 11

Subsection 11(4) has been deleted as unnecessary. Unlike some other jurisdictions, Ontario does not require decisions of the Court of Appeal and Divisional Court to be delivered in court, and to do so would involve a great deal of judicial time. If a judge is not able to deliver his decision in court, it may be filed with the registrar.



## DELETED PROVISIONS

### Judicature Act:

**13.**—(1) The Court of Appeal shall exercise that part of the jurisdiction vested in the Supreme Court that on the 31st day of December, 1912, was vested in the Court of Appeal and in the Divisional Courts of the High Court, and such jurisdiction shall be exercised by the Court of Appeal in the name of the Supreme Court.

(2) Except as provided by subsection (1), all the jurisdiction vested in the Supreme Court shall be exercised by the High Court in the name of the Supreme Court.

**14.**—(1) All jurisdiction, power and authority that on the 31st day of December, 1912, was vested in or exercisable by the Chief Justice of Ontario or by a justice of appeal, is vested in and may be exercised by a judge of the Court of Appeal, and shall be exercised in the name of the Supreme Court.

(2) All jurisdiction, power and authority that on the 31st day of December, 1912, was vested in or exercisable by a judge of the High Court is vested in and may be exercised by a judge of the High Court, and shall be exercised in the name of the Supreme Court.

**16.**—(1) Subject to the rules, the courts and the judges thereof, or any commissioner appointed under section 53, may sit and act, at any time and at any place, for the transaction of any part of the business of the courts, or of the judges or commissioner, or for the discharge of any duty that by any statute, or otherwise, is required to be discharged.

## COMMENTS

### SECTION 13

The Court of Appeal and the High Court derive their jurisdiction from section 2 of the Judicature Act (subsection 2(1) of the Courts of Justice Act) and from specific statutory provisions giving them jurisdiction. Therefore, section 13 has been deleted as unnecessary. Section 13 was also deleted by the Civil Procedure Revision Committee (the Williston Committee).

### SECTION 14

Section 14 has been deleted for the same reason that section 13 has been deleted. The section was also deleted by the Williston Committee.

### SECTION 16

Subsection 16(1) has been deleted as unnecessary. There are no common law limitations on where the Supreme Court may sit. When Upper Canada's Court of King's Bench was established in 1794, it was required to sit at York. However, these provisions have long been deleted.

## DELETED PROVISIONS

### Judicature Act:

187 9. (i) In case bonds or debentures are secured by a mortgage or charge by virtue of a trust deed or other instrument and whether or not provision is contained in the trust deed or other instrument creating such mortgage or charge giving to the holders of such bonds or debentures or a majority, or a specified majority of them, power to sanction the sale, transfer or exchange of the mortgaged or charged premises for a consideration other than cash, and in case any action has been brought or is brought for the purpose of enforcing or realizing upon any such mortgage or charge, or for the execution of the trusts in any such trust deed or other instrument with or without other relief, the court may order a meeting or meetings of the holders of such bonds or debentures to be summoned and held in such manner as the court directs, and if the holders of such bonds or debentures sanction or approve the sale, transfer or exchange of the property so mortgaged or charged for a consideration wholly or in part other than cash, the court may in such action order and approve such sale on such terms in all respects as the court thinks fair and reasonable having regard to the interests of all parties interested in the premises and property so mortgaged or charged, and in such order or by a subsequent order may make provision in such manner, on such terms in all respects as the court considers proper, for the transfer to and vesting in the purchaser or his or its assigns of the whole or any part of the premises and property so mortgaged or charged and so sold, and for the payment of the proper costs, charges and expenses and remuneration of any trustee or trustees under such trust deed or other instrument and of any receiver or receiver and manager appointed by the court, and of any committee or other persons representing holders of such bonds or debentures, and for the distribution or other disposition of the proceeds of such sale, and for the protection of any or all persons whose interests are affected by such order, and for all such incidental, consequential and supplemental matters as the court considers just.

## COMMENTS

### SECTION 18

Paragraph 9 of section 18 has been deleted. The provision is little known, has not been used for several decades and is almost completely incomprehensible. The problem that it is apparently intended to deal with is now dealt with by specific language that is included in all debentures. The paragraph was also deleted by the Williston Committee.

## DELETED PROVISIONS

### Judicature Act:

18 (2) The approval of the holders of any such bonds or debentures may be given by resolution passed at a meeting by the votes of the holders of a majority in principal amount of such bonds or debentures, represented and voting in person or by proxy, and holding not less than 50 per cent in principal amount, or such lesser amount as the court under all the circumstances approves, of the issued and outstanding bonds or debentures in question

19 (2) An action may be brought in the Supreme Court by or on behalf of the Attorney General for an injunction or mandamus restraining the publication of any newspaper, publication, pamphlet, magazine, periodical or other printed matter whatsoever that publishes continuously or repeatedly writings or articles that are obscene, immoral, or otherwise injurious to public morals

(3) An action may be brought in the Supreme Court by or on behalf of the Attorney General for an injunction or mandamus restraining the publication of any newspaper, publication, pamphlet, magazine, periodical or other printed matter whatsoever containing any writing, article or picture tending to insult, degrade, revile or expose to hatred, contempt, ridicule or mockery Her Majesty or any member of the Royal Family

(4) The court may, in addition to making such order, require the defendant to enter into a recognizance in such sum and during such term as the court requires to carry out the terms of the order and to refrain from the publication of any writing, article or picture of a like nature.

(5) Upon the making of such order, the Attorney General may cause a copy thereof to be served personally upon any person and, if the person after the service publishes any such writing, article or picture, he is liable for contempt to the same extent as if he had been a party to the proceedings.

(6) An action under subsection (2) or (3) may be brought against anyone printing, publishing or distributing any publication of the kind mentioned in subsection (2) or (3).

(7) In an action brought under subsection (2), (3) or (6), the judge may on such material as he sees fit grant an interlocutory injunction or mandamus.

## COMMENTS

### SECTION 19

Subsections 19(2) to (7) have been deleted. There appears to have been only one reported case involving the provisions. In Attorney General for Ontario v. Koynok, [1941] 1 D.L.R. 548, Kelly J. held subsection 19(2) to be unconstitutional as legislation in respect of criminal law (reversed without hearing argument on the constitutional issue: [1941] 1 D.L.R. 554n (Ont. C.A.)). Since that time, subsections 19(2) to (7) have never been used. The Criminal Code (Canada) contains provisions respecting obscene publications and defamatory libel.



DELETED PROVISIONS

Judicature Act:

23.—(1) In any action in which the Attorney General for Canada or the Attorney General for Ontario is a party plaintiff and the other attorney general is a party defendant, the court has jurisdiction to make a declaration as to the validity in whole or in part of any Act of the Legislature or any Act of the Parliament of Canada that by its terms purports to have force in Ontario, though no further relief be prayed or sought.

(2) The judgment in any such action is subject to appeal as in ordinary cases.

28.—(2) The Court of Appeal also has jurisdiction as provided by any Act of the Parliament of Canada or of the Legislature.

(3) The Court of Appeal also has jurisdiction to hear and determine applications for new trials and applications to set aside verdicts and findings of juries in actions and matters tried or heard in the High Court.

(4) Nothing in this section limits the generality of subsection 13 (1).

32. Where the jury disagrees or makes no finding on which judgment can be entered, the court may, on the application of the defendant, dismiss the action on the ground that there is no evidence to warrant a judgment for the plaintiff, or that for any other reason he is not entitled to judgment.

COMMENTS

SECTION 23

Section 23 was first enacted prior to the enactment of Crown proceedings statutes reducing the impact of Crown immunity and prior to enactment of statutes permitting references of constitutional and other issues to the courts. Section 23 is no longer necessary.

SECTION 28

Subsection 28(2) has been deleted as unnecessary. Where another statute gives jurisdiction to the Court of Appeal, there is no need to repeat the grant of jurisdiction in the Courts of Justice Act.

Subsection 28(3) has been deleted as unnecessary. Applications for new trials, and applications to set aside verdicts of juries, no longer exist. These remedies are available through the ordinary appeal process. Subsection 28(3) was also deleted by the Williston Committee.

13. Subsection 28(4) has been deleted for the reasons discussed with respect to section 13. The Williston Committee also deleted subsection 28(4).

SECTION 32

This section has been deleted and picked up in the new Rules. It was also deleted by the Williston Committee.

DELETED PROVISIONS

Judicature Act:

34.—(1) If a judge considers a decision previously given to be wrong and of sufficient importance to be considered in a higher court, he may refer the case before him to the Court of Appeal.

(2) Where a case is so referred, it shall be set down for hearing, and notice of hearing shall be given in like manner as in the case of an appeal to the Court of Appeal.

38.—(2) The certificate may be in the following form

I certify that in an action or proceeding in the Supreme Court of Ontario between A.B., of ..... and C.D. of ..... some title or interest is called in question in the following land: (describing it)

Dated at (stating place and date)

39.—(4) On an application under this section, the judge may order any of the parties to it to pay the costs of any of the other parties to it, or may make any other order with respect to costs that under all the circumstances is considered just.

(5) The order vacating a caution or certificate is subject to appeal according to the practice in like cases and may be registered in the same manner as a judgment affecting land, except that the judge granting the order may order a stay of the registration for the purposes of the appeal

(7) The jurisdiction of a judge of the High Court under this section and section 38 may be exercised by a local judge of the High Court.

41.—(3) The Court of Appeal may sit in one division or in two or more divisions as the Chief Justice of Ontario directs from time to time

COMMENTS

SECTION 34

This section has been deleted. The new Rules contain a similar provision.

SECTION 38

Subsection 38(2) has been deleted. The new Rules will contain a form for the certificate of pending litigation.

SECTION 39

Subsection 39(4) has been deleted as unnecessary. The substance of the subsection is covered by the courts' general discretion over costs (section 134 of the Courts of Justice Act).

Subsection 39(5) has been deleted as unnecessary. The Courts of Justice Act contains general provisions concerning appeals of interlocutory orders, the Registry Act and Land Titles Act contain provisions permitting court orders to be registered, and the new Rules contain provisions respecting the staying of orders pending appeal.

Subsection 39(7) has been deleted. The new Rules will give masters and local judges jurisdiction to hear motions to vacate a certificate of pending litigation. Subsection 39(7) was also deleted by the Williston Committee.

SECTION 41

Subsection 41(3) has been deleted as unnecessary. There does not appear to be any common law prohibition on separate panels of a court sitting concurrently. In any case, with 16 judges on the Court of Appeal (subsection 3(1) of the Courts of Justice Act) and only 3 judges required to hear a case (subsection 17(1) of the Courts of Justice Act), it should be obvious that more than one panel may sit at the same time.

## DELETED PROVISIONS

### Judicature Act:

43. Except as provided in section 42, neither the Chief Justice of Ontario nor any of the justices of appeal shall, without his consent, be assigned to or required to perform any duty except as such appertains to him as a member of the Court of Appeal.

46(3) The Divisional Court may sit in two or more sections as the Chief Justice of the High Court may direct from time to time

47.—(1) Sittings of the High Court shall be held in accordance with the rules of court at Ottawa and London on at least one day in each alternate week, except during vacation

(2) Nothing in subsection (1) affects any other sittings of the High Court.

48.—(1) There shall be as many sittings of the High Court in and for every county as are required for the trial of civil causes, matters and issues and for the trial of criminal matters and proceedings.

(2) Separate sittings may be held for the trial of civil causes, matters and issues that are to be tried without a jury, and separate sittings for those that are to be tried with a jury, and separate sittings may also be held for the trial of criminal matters and proceedings.

(3) Sittings may be held concurrently or separately as may be directed by the judges appointing the days therefor or by the judges presiding at the sittings.

## COMMENTS

### SECTION 43

Subsection 42(1) of the Judicature Act permits the Chief Justice of Ontario to assign a justice of appeal to perform, in Toronto, the work of a judge of the High Court. This provision appears as subsection 9(2) of the Courts of Justice Act and is the only provision that permits a justice of appeal to be assigned to perform the work of a judge of the High Court. Section 43 of the Judicature Act, therefore, is unnecessary, since it is subject to subsection 42(1).

### SECTION 46

Subsection 46(3) has been deleted for the same reasons that subsection 41(3) has been deleted.

### SECTION 47

Section 47 has been deleted. It is assumed that a sufficient number of sittings will continue to be held in Ottawa and London.

### SECTION 48

Subsection 48(1) has been deleted as unnecessary. It is assumed that in addition to the two sittings required by subsection 48(6) (subsection 13(3) of the Courts of Justice Act), a sufficient number of sittings will continue to be held.

Subsection 48(2) has been deleted as unnecessary. The judges may continue, as an administrative matter, to establish separate sittings for civil and criminal matters and for jury and non-jury trials.

Subsection 48(3) has been deleted for the same reason that subsection 41(3) has been deleted.



DELETED PROVISIONS

Judicature Act:

48-(4) Subject to the rules, where a sittings is held for the trial of civil causes, matters and issues that are to be tried with and for those that are to be tried without a jury, separate lists shall be made and the jury cases shall be first disposed of unless the presiding judge otherwise directs.

(5) The sittings shall be held in the court house of the county or at such other place in the county as the presiding judge may direct.

49.—(1) Every such sittings shall be presided over by one of the judges of the Supreme Court, or, on the request in writing of a judge of the Supreme Court, by a retired judge of that court, or by a judge of a county court, or by one of Her Majesty's counsel learned in the law appointed for Ontario.

(2) Such judge or counsel while holding the sittings possesses and enjoys and may exercise all the powers and authorities of a judge of the High Court, and in civil proceedings may reserve the giving of his decision on questions raised at the trial and afterwards give the same, and such decisions have the like force and effect as the decision of a judge of the High Court.

50. Where the judge whose duty it is to hold a sittings does not arrive in time or is not able to open court on the day appointed for that purpose, the sheriff may, after 6 o'clock in the afternoon of that day, by proclamation, adjourn the sittings to an hour on the following day to be named by him, and so from day to day until the judge arrives or until other directions from the judge or from the Chief Justice of the High Court are received

51.—(1) No sittings shall begin on any day before 9 o'clock in the forenoon, nor, except for special reasons, shall it extend beyond 7 o'clock in the afternoon, and there shall be an intermission of at least half an hour at or near noon.

(2) Failure to observe any of the provisions of subsection (1) does not render the trial or other proceedings void.

COMMENTS

Subsection 48(4) has been deleted as unnecessary. The new Rules contain provisions establishing separate lists for trial.

Subsection 48(5) has been deleted as unnecessary.

SECTION 49

Section 49 is no longer used to permit retired judges of the Supreme Court, judges of the county and district courts or Queen's Counsel to preside over Supreme Court sittings. This section has been deleted as unnecessary. The section was also deleted by the Williston Committee.

SECTION 50

Section 50 dates from an era when transportation problems often prevented judges from arriving on time to hold sittings. The section is no longer necessary and has been deleted.

SECTION 51

Section 51 has been deleted as unnecessary.

## DELETED PROVISIONS

### Judicature Act:

52. Non-jury actions to be tried in any county, except the Judicial District of York or the Judicial District of York Region, may be entered for trial at any sittings of the High Court in such county.

53.—(1) A commission of assize or any other commission, either general or special, may be issued by the Lieutenant Governor in Council assigning to the person therein named the duty of trying and determining within any place or district named for that purpose by the commission, any cause or matter, or any question or issue of fact or of law or partly of fact and partly of law, in any cause or matter depending in the Supreme Court, or for the exercise of any civil or criminal jurisdiction capable of being exercised by the court.

(2) A commissioner, when exercising any jurisdiction so assigned to him, shall be deemed to constitute the court.

54. Where an action is brought on a judgment obtained in the Province of Quebec in an action in which the service on the defendant or party sued was personal, no defence that might have been set up to the original action may be made to the action on the judgment.

55. Where an action is brought on a judgment obtained in the Province of Quebec in an action in which the service was not personal and in which no defence was made, any defence that might have been set up to the original action may be made to the action on the judgment.

## COMMENTS

### SECTION 52

Section 52 has been deleted. The subject matter of this provision is dealt with in the new Rules. Section 52 was also deleted by the Williston Committee.

### SECTION 53

Section 53 has been deleted as obsolete. The Lieutenant Governor in Council does not issue commissions of assize for Supreme Court proceedings. This section was also deleted by the Williston Committee.

### SECTION 54

This section has been deleted as unnecessary. In future, actions based on Quebec judgments will be dealt with in the same manner as actions based on judgments of other jurisdictions. The Williston Committee also deleted this section.

### SECTION 55

Section 55 has been deleted for the same reason that section 54 has been deleted. Section 55 appears to modify the ordinary rules applicable to actions based on foreign judgments in that it allows a defendant against whom a judgment has been recovered in Quebec, and who was subject to the jurisdiction of the Quebec courts on a ground other than that of personal service in Quebec, to raise as a defence to the Ontario action any defence that he could have raised in the Quebec action: Lung v. Lee (1928), 63 O.L.R. 194 at 199 (C.A.). Section 55 was also deleted by the Williston Committee.

## DELETED PROVISIONS

### Judicature Act:

**56.**—(1) Where an action is brought on a judgment obtained in the Province of Quebec, the costs incurred in obtaining the judgment in that Province are not recoverable without the order of a judge directing their allowance.

(2) Such order shall not be made, unless, in the opinion of the judge, the costs were properly incurred, nor if it would have been a saving of expense and costs to have first instituted proceedings in Ontario on the original claim.

**57.** Actions of libel, slander, malicious arrest, malicious prosecution and false imprisonment shall be tried by a jury, unless the parties in person or by their solicitors or counsel waive such trial.

**60.**—(1) Subject to the rules, if a party desires that the issues of fact be tried or the damages be assessed by a jury, he may, at any stage of the proceedings, but not later than the fourth day after the close of the pleadings, or, if notice of trial or assessment is served before that time, within two days after service of such notice or within such other time as is allowed by a judge, file and serve on the opposite party a notice in writing requiring that the issues be tried or the damages be assessed by a jury, and if such notice is given, subject to subsection (3), they shall be tried or assessed accordingly.

(2) A copy of the notice shall be attached to the certified copy of the pleadings prepared for use at the trial.

(3) Notwithstanding the giving of the notice, the issues of fact may be tried or the damages may be assessed without the intervention of a jury if the judge presiding at the sittings so directs or if it is so ordered by a judge.

## COMMENTS

### SECTION 56

Section 56 has been deleted for the same reason that sections 54 and 55 have been deleted. Section 56 was also deleted by the Williston Committee.

### SECTION 57

Section 57 has been deleted. This will mean that jury trials will no longer be mandatory in actions of libel, slander, malicious arrest, malicious prosecution and false imprisonment. Jury trials may still be obtained in these actions under section 115 of the Courts of Justice Act and the new Rules.

### SECTION 60

Subsections 60(1), (2) and (3) have been deleted. The new Rules will provide the procedure for obtaining a jury trial. These provisions were also deleted by the Williston Committee.



DELETED PROVISIONS

Judicature Act:

68.—(1) Where it is desired to move to quash a conviction, order, warrant or inquisition, the proceeding shall be by motion in the first instance instead of by certiorari, rule or order nisi.

(2) Notice of the motion shall be served at least six days before the return day thereof upon the provincial judge or justice of the peace making the conviction or order, or issuing the warrant, or the coroner making the inquisition, and also upon the prosecutor or informant, if any, and upon the clerk of the peace if the proceedings have been returned to his office, and the notice shall specify the objections intended to be raised.

(3) Upon the notice of motion shall be endorsed a copy of subsection (4) and a notice in the following form, addressed to the provincial judge or justice of the peace, coroner, or clerk of the peace, as the case may be:

You are hereby required forthwith after service hereof to return to the office of the Registrar of the Supreme Court at Toronto, the conviction (or as the case may be) herein referred to, together with the information and evidence, if any, and all things touching the matter, as fully and entirely as they remain in your custody, together with this notice

Dated

To A B

Provincial Judge (or as the case may be)

C D

Solicitor for the Applicant

(4) Upon receiving the notice so endorsed, the provincial judge, justice of the peace, coroner or clerk of the peace shall forthwith return to the office of the Registrar of the Supreme Court at Toronto, the conviction, order, warrant or inquisition, and the information and evidence, if any, and all things touching the matter, and the notice served upon him with a certificate endorsed upon it in the following form:

Pursuant to the within notice I herewith return to this Honourable Court the following papers and documents

- 1. The conviction (or as the case may be)
- 2. The information and the warrant issued thereon

COMMENTS

SECTION 68

Section 68 has been deleted as unnecessary in light of the provisions of the Provincial Offences Act and the Judicial Review Procedure Act. The section was also deleted by the Williston Committee.

DELETED PROVISIONS

Judicature Act:

68(4) 3 The evidence taken at the hearing

4 *(Any other papers or documents touching the matter)*

And I hereby certify to this Honourable Court that I have above truly set forth all the papers and documents in my custody or power relating to the matter set forth in this notice of motion

(5) The certificate has the same effect as a return to a writ of certiorari or to an order under the rules

(6) The notice is returnable before a judge of the High Court

(7) The motion shall not be entertained unless,

(a) the return day thereof is within six months after the conviction, order, warrant or inquisition; and

(b) the applicant is shown to have entered into a recognizance with one or more sufficient sureties in the sum of \$100 before a provincial judge of the county in which the conviction, order or inquisition was made or the warrant was issued, or before a judge of the county court of that county or before a judge of the High Court, conditioned that the applicant will prosecute the application at his own costs and charges without any wilful or affected delay and that he will pay to the person in whose favour the conviction, order or other proceeding is affirmed his full costs and charges to be taxed according to the course of the court in case the conviction, order or other proceeding is affirmed, or has paid into court the like sum as security that he will do so.

(8) The recognizance, with an affidavit of its due execution, shall be filed in the office of the Registrar of the Supreme Court.

(9) The judge has all the powers of the court in the like matters and may order the production of such papers and documents as he considers necessary

(10) No appeal from the order of the judge lies unless leave is granted by a judge of the High Court

COMMENTS

DELETED PROVISIONS

Judicature Act:

69. Upon a motion to quash a conviction, it is the duty of the judge to examine and consider the proceedings returned to the court and, if such proceedings show that the person accused has been convicted of any offence known to the law and that there is any evidence to sustain the conviction, the conviction shall be affirmed, but otherwise the conviction shall be quashed, provided that if the evidence returned shows that the accused is guilty of an offence against the law, or that the conviction, though irregular, ought to be amended or drawn so as to duly describe the offence, the conviction shall be affirmed or amended as justice requires.

70.—(1) Subject to the rules and to a right to have particular cases tried by a jury, a judge of the High Court may refer a question arising in an action for inquiry and report either to an official referee or to a special referee agreed upon by the parties

(2) Subsection (1) does not, unless with the consent of the Crown, authorize the reference to an official referee of an action to which the Crown is a party or of a question or issue therein.

71. In an action,

(a) if all the parties interested who are not under disability consent, and, where there are parties under disability, the judge is of opinion that the reference should be made and the other parties interested consent; or

(b) where a prolonged examination of documents or a scientific or local investigation is required that cannot, in the opinion of a court or a judge, conveniently be made before a jury or conducted by the court directly; or

(c) where the question in dispute consists wholly or partly of matters of account,

a judge of the High Court may at any time refer the whole action or any question or issue of fact arising therein or question of account either to an official referee or to a special referee agreed upon by the parties

COMMENTS

SECTION 69

Section 69 has been deleted for the same reason that section 68 was deleted. Section 69 was also deleted by the Williston Committee.

SECTION 70

Section 70 has been deleted. The new Rules contain comprehensive provisions respecting references. Section 70 was also deleted by the Williston Committee.

SECTION 71

Section 71 has been deleted for the same reason that section 70 was deleted. The Williston Committee also deleted section 71.



## DELETED PROVISIONS

### Judicature Act:

72.—(1) If it appears in any action that a material question to be determined is the true definition of a boundary line, the question may be referred to a special referee who is an Ontario land surveyor.

(2) The referee shall, by a proper survey as directed by the *Surreys Act*, and upon hearing the evidence adduced by the parties and their counsel, if any, define upon the ground by such posts and monuments as he considers sufficient the true boundary or division line so in dispute

(3) The referee shall make a report to the court and shall therein set forth his mode of procedure and what he has done in the premises, and also such further or other facts and circumstances as are necessary to enable the court finally to determine the question and how the costs should be borne

78.—(1) In the case of a reference to a special referee, he shall be deemed to be an officer of the Supreme Court

(2) The remuneration to be paid to a special referee may be determined by a judge of the High Court.

(3) The remuneration, fees, charges and disbursements payable to an official referee, and, in the absence of any special direction, to a special referee, shall be the same as are payable to a local master.

(4) Where the judge at the trial instead of trying an action refers the whole action under section 71 to an official referee who is a local registrar or deputy registrar, a local master or other officer of the court, paid wholly or partly by salary, no fees shall be charged by the referee.

74. The referee shall make his findings and embody his conclusions in the form of a report, and his report shall be subject to all the incidents of a report of a master on a reference as regards filing, confirmation, appealing therefrom, motions thereupon and otherwise, including appeals to the Court of Appeal, except that, where a whole action has been referred under section 71, the appeal from the report lies direct to the Court of Appeal

## COMMENTS

### SECTION 72

Section 72 has been deleted for the same reason that section 70 was deleted. The Williston Committee also deleted section 72.

### SECTION 73

Section 73 has been deleted for the same reason that section 70 was deleted. The Williston Committee also deleted section 73.

### SECTION 74

Section 74 has been deleted for the same reason that section 70 was deleted. The Williston Committee also deleted section 74.

DELETED PROVISIONS

Judicature Act:

75. The evidence of witnesses examined upon the reference and the exhibits shall forthwith after the making of the report be transmitted by the referee to the proper officer of the court.

77(4) No person, other than the person being examined and the one or more medical practitioners making the examination, shall be present during the examination except with the consent of the parties or as may be ordered by the court, judge or other person who ordered the examination.

(5) The court, judge or other person may order a second examination or further examinations upon such terms as to costs as are considered proper.

(6) Every such medical practitioner shall be selected by the court, judge or person making the order, and may afterwards be a witness on the trial unless the court, judge or person before whom the action or proceeding is tried otherwise directs.

78. A person who has committed a wrong giving a cause of action for the recovery of damages to the person wronged may at any time before action tender amends, and the tender has the same effect as a tender in an action for the recovery of a debt.

80(2) Nothing herein shall deprive a trustee, mortgagee or other person of any right to costs out of a particular estate or fund.

(3) Where an action or issue is tried by a jury, the costs shall follow the event, unless the judge before whom the action or issue is tried in his discretion otherwise orders

COMMENTS

SECTION 75

Section 75 has been deleted for the same reason that section 70 was deleted. The Williston Committee also deleted section 75.

SECTION 77

Subsections 77(4), (5) and (6) have been deleted. They are dealt with in the new Rules.

SECTION 78

Section 78 has been deleted as unnecessary. It has not been used for many years. The principle behind tender before action appears to be that the tender must be taken into consideration when the court awards cost. The new Rules provide that, in awarding costs, the court may consider, among other things, the conduct of any party that tended to unnecessarily lengthen the duration of the proceeding. The new Rules also contain extensive provisions dealing with offers to settle and the costs consequences of refusing an adequate offer. Section 78 was also deleted by the Williston Committee.

SECTION 80

Subsection 80(2) has been deleted as unnecessary. There is nothing in section 135 of the Courts of Justice Act that could be interpreted as depriving a trustee, mortgagee or other person of any right to costs out of a particular estate or fund.

Subsection 80(3) has been deleted. In future, the same principles applicable to costs in non-jury actions will apply to jury actions. Subsection 80(3) was also deleted by the Williston Committee.

## DELETED PROVISIONS

### Judicature Act:

**81.** Subject as to appeals under Part VIII of the *Election Act* to that Act, and as to appeals and applications for new trials under the *Criminal Code* (Canada) to that Act, the practice and procedure upon appeals to the Court of Appeal shall be that provided by the rules.

**84-(2)** The oath shall be administered by a judge in court.

(3) Where it is not convenient for a person appointed to an office to attend at Toronto to take the oath, it may be taken before the judge of the county court of the county in which the officer resides, and in every such case the judge shall forthwith transmit the oath to and it shall be filed in the office of the Registrar of the Supreme Court at Toronto.

**86.—(1)** In the event of the death, suspension, resignation, retirement or removal of a local registrar, county court clerk or surrogate registrar, the deputy local registrar, deputy county court clerk or deputy surrogate registrar, as the case may be, is *pro tempore* the local registrar, county court clerk or surrogate registrar, as the case may be, until the suspension is terminated or another person has been appointed and has assumed the duties of the local registrar, county court clerk or surrogate registrar, as the case may be.

(2) Where there is no deputy local registrar, deputy county court clerk or deputy surrogate registrar, in the absence of or in the event of the death, suspension, resignation, retirement or removal of the local registrar, county court clerk or surrogate registrar, as the case may be, the Crown attorney for the county is *pro tempore* the local registrar, county court clerk or surrogate registrar, as the case may be, until the suspension is terminated or another person has been appointed and has assumed the duties of the local registrar, county court clerk or surrogate registrar, as the case may be.

## COMMENTS

### SECTION 81

Section 81 has been deleted as unnecessary. Since the Court of Appeal is part of the Supreme Court, the practice and procedure on appeals to the Court of Appeal will be dealt with by the rules of the Supreme Court. Section 81 was also deleted by the Williston Committee.

### SECTION 84

Subsections 84(2) and (3) have been deleted. These provisions deal with matters that do not require statutory attention.

### SECTION 86

Section 86 has been deleted as unnecessary. Section 85 (which is re-enacted by subsections 20(3), 36(2) and 200(4) of the Courts of Justice Act) permits a deputy to perform the duties of the registrar or clerk. The deputy may perform these duties in the event of the death, suspension, resignation, retirement or removal of the registrar or clerk.



DELETED PROVISIONS

Judicature Act:

88.—(1) Every officer paid wholly or partly by fees whether commuted or not, shall on or before the 15th day of January in every year, transmit to the Inspector of Legal Offices a just, true and faithful account, verified by his oath, of the amount of fees paid or payable to him in respect of his office during the next preceding calendar year, and such other particulars with reference to the business of his office as the Inspector may require.

(2) The Lieutenant Governor in Council or the minister having charge of the matter may require the return to state any particulars, or to be made in any form that is considered proper, and the return shall be made accordingly.

89. The officers in Toronto, save the Official Guardian, special examiners, stenographic reporters and any official referee other than one holding that office *ex officio*, shall keep their offices at or adjacent to Osgoode Hall, in the City of Toronto.

90. Unless otherwise directed by the Lieutenant Governor in Council, every local master shall keep his office in the court house of the county for which he is appointed

91. Every local registrar and every deputy registrar shall, if proper accommodation is afforded to him there, keep his office in the court house of the county for which he is appointed, and, until he can obtain such accommodation, he shall keep his office in some convenient place in the county town

92.—(1) In this section, "holiday" means,

(a) Saturday;

(b) Sunday;

(c) a day that is a holiday for civil servants as prescribed by the regulations under the *Public Service Act*

(2) Except on holidays when they shall be closed, every local registrar's office and the offices of the Supreme Court in Toronto shall be kept open from 9.30 o'clock in the forenoon until 4.30 o'clock in the afternoon.

COMMENTS

SECTION 88

Section 88 has been deleted as unnecessary. There are no longer any officers of the Supreme Court who are paid by fees. Section 88 was also deleted by the Williston Committee.

SECTION 89

Section 89 has been deleted as unnecessary. The section was also deleted by the Williston Committee.

SECTION 90

Section 90 has been deleted as unnecessary. The section was also deleted by the Williston Committee.

SECTION 91

Section 91 has been deleted as unnecessary. Section 91 was also deleted by the Williston Committee.

SECTION 92

Section 92 has been deleted. The substance of the section is dealt with in the new Rules. Section 92 was also deleted by the Williston Committee.

## DELETED PROVISIONS

### Judicature Act:

**93.**—(1) Every officer of the Supreme Court, if so required by the Lieutenant Governor in Council, shall give security to Her Majesty for the due performance of the duties of his office in such sum as the Lieutenant Governor in Council may direct

(2) The neglect to give such security renders the appointment of the officer void, but the forfeiture of office does not affect any act done by him while he continues to act

**95.**—(1) Judges of county courts, masters, registrars, local masters, local registrars, and deputy registrars are official referees for the trial of such questions as are directed to be tried by an official referee

(2) Where the business requires additional official referees, the Lieutenant Governor in Council may appoint them

(3) Subject to subsection 73 (4), the fees on a reference or trial shall be paid in money

**101.**—(1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint such local masters as are considered necessary

(2) Where a master or local master is not appointed in respect of a county, the county court judge is and shall perform the duties and exercise the powers of local master

(3) In the absence or inability to act of a local master appointed under subsection (1), the county court judge may perform the duties and exercise the powers of the local master

**102.** Unless another person is appointed, the clerk of the district court is *ex officio* local registrar for his district.

## COMMENTS

### SECTION 93

Section 93 has been deleted as unnecessary. There are no longer any officers of the Supreme Court who are required to give security. Section 93 was also deleted by the Williston Committee.

### SECTION 95

Section 95 has been deleted. The persons to whom references may be directed are dealt with in the new Rules. Section 95 was also deleted by the Williston Committee.

### SECTION 101

Section 101 has been deleted as unnecessary. The new Rules do not give any jurisdiction to local masters. Jurisdiction will be exercised either by a full master or by a local judge.

### SECTION 102

Section 102 has been deleted as unnecessary. County and district court clerks outside Toronto are specifically appointed as local registrars of the Supreme Court under section 83 of the existing Act and will continue to be specifically appointed under subsection 20(2) of the Courts of Justice Act.

## DELETED PROVISIONS

### Judicature Act:

104.3 There shall be at least four special examiners in Toronto.

(4) Where an examination is taken by a stenographer or other person who is not a special examiner, it shall be taken in the presence of the special examiner.

(5) A special examiner shall not solicit or make request from any suitor, solicitor, or other person, or offer any inducement to have a special examination taken before him, nor shall any one do so on his behalf with his knowledge or assent, on pain of forfeiture of office.

(6) Where it appears to the Lieutenant Governor in Council that a local registrar, a deputy registrar, or a clerk of a county court, elsewhere than in Toronto, is infirm or ill, or is otherwise unable or unfit to act personally as special examiner, or if he is absent on leave, the Lieutenant Governor in Council may appoint the stenographic reporter for the county court or some other person to act temporarily or otherwise as such special examiner in his stead.

105.—(1) The Lieutenant Governor in Council may commute the fees payable to an officer entitled to take fees to his own use for a fixed annual sum, not exceeding the average income derived from such fees during the next preceding five years.

(2) An annual sum so fixed and any order in council for payment of any such annual sum may be rescinded, and the amount may be increased or diminished, but in no case shall it exceed the average income or fees, as the case may be, during the next preceding five years.

106.—(1) Every order in council determining a commutation allowance under this Act shall be laid before the Assembly forthwith, if the Assembly is then in session, and, if the Assembly is not then in session, within the first fifteen days after the opening of the next session.

(2) If the Assembly at such session, or, if the session does not continue for three weeks after the order in council is laid before the Assembly, then at the next ensuing session, disapproves by resolution of such order in council, either wholly or so far as relates to any person named in it, the order in council, so far as so disapproved, has no effect from the time of the passing of the resolution.

## COMMENTS

### SECTION 104

Subsection 104(3) has been deleted as unnecessary. The subsection was also deleted by the Williston Committee.

Subsection 104(4) has been deleted. The new Rules will permit examinations to be taken by freelance reporters in certain circumstances. Subsection 104(4) was also deleted by the Williston Committee.

Subsection 104(5) has been deleted as unnecessary.

Subsection 104(6) has been deleted as unnecessary. Subsection 97(3) of the Courts of Justice Act permits official examiners to appoint deputies who may perform their duties.

### SECTION 105

Section 105 has been deleted as unnecessary. There are no longer any officers of the Supreme Court entitled to take fees for their own use. Section 105 was also deleted by the Williston Committee.

### SECTION 106

Section 106 has been deleted for the same reason that section 105 was deleted. Section 106 was also deleted by the Williston Committee.



# DELETED PROVISIONS

## Judicature Act:

107-(2) The Lieutenant Governor in Council may appoint a barrister or solicitor to be the Assistant Inspector of Legal Offices, and, in the absence of the Inspector or if the office of Inspector is vacant or if directed by the Inspector, the Assistant Inspector of Legal Offices has the powers and may perform the duties of the Inspector under this or any other Act.

108.—(1) In addition to any other duties assigned to him by any Act of the Legislature or by the Lieutenant Governor in Council, the Inspector shall,

- (a) make a personal inspection of the offices mentioned in subsection 107 (1) and of the books and court papers belonging to them;
- (b) see that proper books are provided, that they are in good order and condition, that the proper entries and records are made therein in a proper manner, at proper times and in proper form and order, and that the court papers and documents are properly classified and preserved;
- (c) ascertain that the duties of the officers, other than masters, are duly and efficiently performed;
- (d) see that proper costs and charges only are allowed or exacted;
- (e) ascertain whether uniformity of practice prevails in the offices; and
- (f) report upon all such matters to the Lieutenant Governor.

# COMMENTS

## SECTION 107

Subsection 107(2) has been deleted as unnecessary. There is no Assistant Inspector of Legal Offices at the present time. If one is required, he or she may be appointed by the Lieutenant Governor in Council under clause 27(o) of the Interpretation Act.

## SECTION 108

Subsection 108(1) has been deleted. The specific matters listed in that provision are considered to be redundant in light of the Inspector's general authority to inspect all court offices under subsection 94(2) of the Courts of Justice Act. Subsection 108(1) was also deleted by the Williston Committee.

DELETED PROVISIONS

Judicature Act:

109-(4) Where an estate is small and the amount at the credit of the Account of the Official Guardian is adequate to pay his salary and the disbursements of his office, the court may direct that no costs be paid to him out of the estate

(5) There shall be paid to the Official Guardian for all business done and all costs in respect of it over and above all disbursements, a fixed annual salary of such sum as, in view of the amount of the business done or to be done by him and the sum at the credit of the account, the finance committee considers reasonable and the Lieutenant Governor in Council approves

(6) The salary and disbursements shall be paid monthly out of the moneys that are appropriated by the Legislature for that purpose and the Lieutenant Governor in Council may provide for the payment out of the moneys at the credit of the account into the Consolidated Revenue Fund of amounts equal to such salary and disbursements

(7) Out of the surplus at the credit of the account shall be transferred to the Suits Fee Fund Account such amount as the finance committee may direct

(8) If in any year the amount at the credit of the account is insufficient to pay the salary and disbursements, the deficiency shall be paid out of such reserve funds as the finance committee may direct

(9) The Lieutenant Governor in Council may appoint one or two persons to act as the deputy or the deputies, as the case may be, of the Official Guardian during his absence or illness, and while so acting each such deputy has all the powers and may perform any of the duties of the Official Guardian

(10) If the office of Official Guardian becomes vacant, the Attorney General is *ex officio* Official Guardian until another appointment is made

COMMENTS

SECTION 109

Subsections 109(4) to (8) have been deleted as obsolete. The Official Guardian is no longer paid in the manner provided for by those subsections. The subsections were also deleted by the Williston Committee.

Subsection 109(9) has been deleted as unnecessary. Deputy Official Guardians may be appointed by the Lieutenant Governor in Council under clause 27(o) of the Interpretation Act.

Subsection 109(10) has been deleted as unnecessary. If the office of Official Guardian becomes vacant, a deputy may perform his duties until another Official Guardian is appointed.

DELETED PROVISIONS

Judicature Act:

109-(13) If the Lieutenant Governor in Council so directs, the Official Guardian shall not directly or indirectly practise the profession of the law as counsel or solicitor or act as a notary public or conveyancer or do any matter to be conveying or prepare any paper or document to be used in any court in Ontario except in the discharge of his duties as Official Guardian or of a duty that is assigned to him under this Act.

(14) For every contravention of subsection (13), the Official Guardian shall incur a penalty of \$400.

(16) When a new Official Guardian is appointed, he *ipso facto* becomes and is by virtue of his appointment guardian *ad litem* of all minors in the place and stead of his predecessor with the same rights, duties and powers, and the latter or his executors or administrators shall forthwith deliver to the new Official Guardian all letters, papers, documents and books in his or their possession or power relating to matters in which such predecessor acted as official or other guardian *ad litem* of minors, and the new Official Guardian shall forthwith notify all persons concerned of his appointment.

110(3) Where there is a vacancy in the office of Accountant, such officer or person as is directed by the rules to perform the duties of the office shall be deemed to be and have all the powers of the Accountant.

(4) The expenses of the Accountant's office, including all salaries, are payable out of the moneys that are appropriated therefor by the Legislature, and the Lieutenant Governor in Council may provide for payment out of the income from the funds in court into the Consolidated Revenue Fund of amounts equal to such expenses, and such amounts are the first charge on the income from the funds in court.

111-(6) Where an investment in debentures of a municipal corporation is made, the validity of the debentures is not thereafter open to question but they shall be deemed to be valid.

COMMENTS

Subsections 109(13) and (14) have been deleted as unnecessary. An Official Guardian who seriously neglects his duties or places himself in a serious conflict of interest position may be dismissed from office. Subsection 109(14) was also deleted by the Williston Committee.

Subsection 109(16) has been deleted as unnecessary. The provision was also deleted by the Williston Committee.

SECTION 110

Subsection 110(3) has been deleted as unnecessary. In the event of a vacancy in the office of the Accountant, a Deputy Accountant appointed under clause 27(o) of the Interpretation Act may perform the duties of the Accountant. Alternatively, the Lieutenant Governor in Council could appoint a person as Accountant on an acting basis.

Subsection 110(4) has been deleted as unnecessary. By deleting the provision, the expenses of the Accountant's office will be paid in the same manner as other court offices.

SECTION 111

Subsection 111(6) has been deleted as obsolete. The subsection was also deleted by the Williston Committee.



## DELETED PROVISIONS

### Judicature Act:

111-(8) When an amount exceeding \$50,000 is in court to the credit of an account for investment, the Accountant may, if so directed by the finance committee, notwithstanding any order for payment out of court, withhold payment for three months to enable him to realize upon the securities in which money in court is invested.

114. The Suitors Fee Fund Account shall be kept and managed by the finance committee, and the Court of Appeal or any judge of the Supreme Court may with the approval of the finance committee apply so much of the money at the credit of the account as may be necessary for the protection of any minor or other person *not sui juris* or *non compos mentis*, on whose behalf proceedings may be had in the court, or may be ordered to be had in another court, and the finance committee may also, from time to time, order to be paid out of the money at the credit of the account any sum required to make good a default in respect of any suitor's money or securities from any mistake, act or omission of any officer of the court, but such payment does not prejudice the right to require the officer or his sureties to make good the loss occasioned by the mistake, act or omission.

116 -(8) The Rules Committee shall hold an annual meeting on the first Monday following Christmas Day that is not a holiday at the City of Toronto or at such other time and place as the chairman may direct.

(9) The chairman may at any time and upon the written request of any three members shall direct the secretary to call a meeting of the Rules Committee at such time and place as he may determine

119.—(1) Where by this or any other Act any power or authority is conferred upon the judges of the Supreme Court or upon the judges of the High Court as a body, they may respectively delegate such power or authority to a committee of themselves, and when it is exercised by the committee, the acts done by the committee have the same effect as if they had been done by the body by which the committee was appointed.

(2) The presence of a majority of the members of the committee is necessary to constitute a quorum for the transaction of business.

## COMMENTS

Subsection 111(8) has been deleted as no longer necessary. The provision was also deleted by the Williston Committee.

### SECTION 114

The Suitors Fee Fund Account no longer serves any purpose. Therefore, section 114 has been deleted and, under subsection 177(2) of the Courts of Justice Act, money in the account (approximately \$2,600) will be paid into the Consolidated Revenue Fund. Section 114 was also deleted by the Williston Committee.

### SECTION 116

Subsections 116(8) and (9) have been deleted. Meetings of the Rules Committee may be held whenever necessary.

### SECTION 119

Section 119 has been deleted as unnecessary. Although the rules of the Supreme Court were at one time made by the judges of the Supreme Court, there are no longer any provincial statutes that give power to the judges of the Supreme Court or the judges of the High Court as a body. It is unclear whether the province can legislate with respect to how the judges of the Supreme Court may exercise powers that are conferred by federal statutes on the judges as a body. However, section 21 of the Interpretation Act (Canada) provides that, where an enactment establishes a court and fixes the number of members (as the Courts of Justice Act does for the Supreme Court) a quorum is at least one-half of the number fixed and a majority at a meeting with a quorum can do anything the court is permitted to do as a body.

DELETED PROVISIONS

Judicature Act:

120. Where by this Act any power is conferred on the judges of the Supreme Court or of the High Court, the power may be exercised at a meeting duly called at which, in the case of the Supreme Court, at least seven of the judges are present and, in the case of the High Court, at least five of the judges are present

123. All correctional institutions in Ontario are prisons of the court

125. A public official or other witness subpoenaed or called upon to produce before any court or other tribunal any public or other document is not entitled to more than ordinary witness fees, unless the court or other tribunal otherwise orders

126. In addition to the provisions of this Act that are expressly made applicable to all courts or county courts or are otherwise by their terms so applicable, sections 27, 34, 36, 38, 54 to 56, 62 to 66, 78, 79, 80, 117, 122 and 123, with necessary modifications apply to the county courts

127. This Act does not affect the power to issue commissions for the discharge of civil or criminal business on circuit or otherwise.

128. Any judge presiding at any sittings of the court shall be deemed to constitute the court.

COMMENTS

SECTION 120

There are no longer any provisions in the Judicature Act that confer power on the judges of the Supreme Court or the High Court as a body. Therefore, section 120 no longer applies to anything. For this reason, the section has been deleted.

SECTION 123

This section has been deleted as unnecessary. It was originally enacted in 1837 to ensure that the newly- created Court of Chancery had the same powers with respect to jails as other courts. This section has long since ceased to serve any purpose.

SECTION 125

Section 125 has been deleted as unnecessary. It was also deleted by the Williston Committee.

SECTION 126

Section 126 has been deleted as unnecessary in the context of the Courts of Justice Act.

SECTION 127

Section 127 has been deleted as unnecessary. The Lieutenant Governor in Council no longer issues commissions for persons to act as Supreme Court judges. This section was also deleted by the Williston Committee.

SECTION 128

Section 128 has been deleted for the same reason that section 127 was deleted. Section 128 was also deleted by the Williston Committee.

DELETED PROVISIONS

Judicature Act:

130(9) The Lieutenant Governor in Council may make regulations prescribing forms of documents or of parts of documents in both the English and the French languages for use in or relating to proceedings in designated courts and requiring their use

133.—(1) In an action commenced or prosecuted in any court upon a bond for non-performance of any covenant or agreement in any indenture, deed or writing, the plaintiff may assign as many breaches as he thinks fit, and, upon trial of such action, not only such damages and costs as have heretofore been usually assessed shall be assessed, but also damages for such of the breaches so assigned as the plaintiff upon the trial of the issues proves, and the like judgment shall be entered as heretofore in such action

(2) If judgment is given for the plaintiff by confession or default, he may suggest as many breaches of the covenants and agreements as he thinks fit, and the damages that he has sustained thereby shall be assessed, and, if the defendant after such judgment entered and before any execution executed, pays into the court in which the action is brought to the use of the plaintiff such damages so to be assessed by reason of all or any of the breaches of such covenants or agreements, together with the costs of suit, a stay of execution on the judgment shall be entered upon record

COMMENTS

SECTION 130

Subsection 130(9) has been deleted as unnecessary. The Lieutenant Governor in Council does not require any special authority in order to prescribe forms in more than one language. Where a statute gives the Lieutenant Governor in Council or any other body power to prescribe forms, the forms may be prescribed in any language.

SECTION 133

Section 133 has been deleted as unnecessary. The provisions of the Rules are adequate to deal with the procedure for actions on bonds. Section 133 was also deleted by the Williston Committee.



## DELETED PROVISIONS

### Judicature Act:

133(3) If by reason of any execution executed the plaintiff or his executors or administrators are fully paid or satisfied, all such damages so to be assessed, together with his or their costs of suit and all reasonable charges and expenses for executing the execution the body, land or goods of the defendant shall be thereupon forthwith discharged from the execution, which shall likewise be entered upon record but such judgment shall, nevertheless, remain, continue and be as a further security to answer to the plaintiff and his executors or administrators such damages as shall or may be sustained for further breach of any covenant or agreement in the same indenture, deed or writing contained upon which the plaintiff may apply to the court in which judgment is entered for leave to issue execution upon the judgment against the defendant, or his executors or administrators, suggesting other breaches of the covenants or agreements, and to call upon him or them to show cause why execution shall not be awarded upon the judgment upon which the court shall make such order as is considered just

(4) Upon payment or satisfaction of such future damages, costs and charges, all further proceedings on the judgment shall again be stayed as often as occasion arises, and the defendant, his body, land or goods shall be discharged out of execution.

137. Where an action is brought upon a bill or where an action is brought upon a judgment, if the defendant has paid the money due upon the bill or judgment the payment may be pleaded in the action, and where an action is brought upon a bond that has a condition or defeasance to make void the same upon payment of a lesser sum at a day or place certain, if the obligor, his heirs, executors or administrators have before the action brought, paid to the obligee, his executors or administrators the principal and interest due by the condition or defeasance of the bond though the payment was not made strictly according to the condition or defeasance, yet it may nevertheless be pleaded in the action, and is as effectual a bar thereof as if the money had been paid at the day and place according to the condition or defeasance and had been so pleaded

## COMMENTS

### SECTION 137

Section 137 merely confirms the equitable doctrine that failure to pay principal on a certain day may be compensated by paying the principal, interest due and costs on a subsequent date: *Re Dixon*, [1900] 2 Ch. 561 at 578. Therefore, this section is unnecessary. Section 137 was also deleted by the Williston Committee.

# DELETED PROVISIONS

## Judicature Act:

138. If, at any time pending an action upon a bond with a penalty, the defendant brings into court all the principal money and interest due on the bond and also all such costs as have been expended in any suit upon the bond, the money so brought in shall be deemed and taken to be in full satisfaction and discharge of the bond, and the court may give judgment to discharge the defendant of and from the bond accordingly.

140. Any person who would, under the circumstances alleged by him to exist, become entitled, upon the happening of any future event, to any office or to any estate or interest in any property, real or personal, the right or claim to which cannot by him be brought to trial before the happening of the event, is entitled to maintain an action in the Supreme Court to perpetuate any testimony that may be material for establishing his claim or right, and all laws, rules and regulations, not contrary to this section, in force or in use in suits to perpetuate testimony, or respecting depositions taken in such actions in making such depositions, are in force and shall be used and applied in all actions instituted under this section and in respect of depositions taken in the action.

141. In all actions instituted under section 140 touching any office or any other matter or thing in which the Crown may have any estate or interest, it is lawful to make the Attorney General a party defendant thereto, and in all proceedings in which the depositions taken in any such action in which the Attorney General was so made a defendant may be offered in evidence, the depositions may be admissible notwithstanding any objection to the depositions upon the ground that the Crown was not a party to the action in which the depositions were taken.

142. Any order or judgment of the court made in an action or upon an originating motion, special case or in any other way permitted by the rules or any statute effectually protects and indemnifies any person acting thereon in good faith.

## COMMENTS

### SECTION 138

Section 138 has been deleted for the same reason that section 137 has been deleted. Section 138 was also deleted by the Williston Committee.

### SECTION 140

Section 140 does not appear to be used. Therefore, it has been deleted as unnecessary.

### SECTION 141

Section 141 has been deleted for the same reason that section 140 has been deleted. Section 141 was also deleted by the Williston Committee.

### SECTION 142

Subsection 142 originally appears to have been directed at the issue now dealt with in subsection 60(2) of the Trustee Act. Therefore, section 142 is no longer necessary.

## DELETED PROVISIONS

### Judicature Act:

**143.**—(1) Where a person has been directed by a judgment or order to execute a deed or other instrument, or make a surrender or transfer, and has refused or neglected to execute the deed or instrument, or make the surrender or transfer, and has been committed to prison under process for such contempt, or, being confined in prison for any other cause, has been charged with or detained under process for such contempt and remains in prison, the court may grant a vesting order or may order or appoint an officer of the court to execute the deed or other instrument or to make the surrender or transfer for and in the name of such person.

(2) The execution of such deed or other instrument, or the surrender or transfer in his name made by such officer, has in all respects the same force and validity as if it had been executed or made by the person himself

(3) Thereupon the person in contempt shall be considered as having cleared his contempt, except as regards the payment of the costs of the contempt, and is entitled to an order that he be discharged from custody, and the court shall make such order as is considered just touching the payment of the cost of or concerning the deed or other instrument, surrender or transfer

**144.**—(1) Where a person is committed for a contempt in not delivering to any person, or depositing in court or elsewhere, as by an order may be directed, books, papers, or any other articles or things, any sequestrator appointed under any commission of sequestration has the same power to seize and take the books, papers, or other articles or things, being in the custody or power of the person against whom the sequestration issues, as he would have over his own property, and thereupon the books, papers, or other articles or things so seized and taken shall be dealt with as the court considers proper

(2) After such seizure the court may, upon the application of the prisoner or of any other person in the cause or matter, or upon any report, make such order for the discharge of the prisoner upon such terms as to costs and otherwise as the court considers proper

## COMMENTS

### SECTION 143

Section 143 is no longer necessary in light of section 79 of the Judicature Act (section 107 of the Courts of Justice Act). Subsection 143(3) was also deleted by the Williston Committee.

### SECTION 144

Section 144 has been deleted as unnecessary. The new Rules contain provisions respecting the enforcement of contempt orders. Section 144 was also deleted by the Williston Committee.



DELETED PROVISIONS

Judicature Act:

145. Where a person committed for a contempt is entitled to his discharge upon applying to the court but omits to make the application, the court may compulsorily discharge the person from custody and direct payment of the costs of the contempt out of any funds belonging to him over which the court has power, or may order payment of the costs by the person.

146.—(1) If a person against whom a judgment has been entered in any of Her Majesty's courts in Ontario has any government stock, funds or annuities, or any stock or shares of or in a public company in Ontario, whether incorporated or not, standing in his name in his own right, or in the name of any person in trust for him, a judge of the Supreme Court, on the application of any judgment creditor, may order that the stock, funds, annuities, or shares of such of them or such part thereof as he thinks fit shall stand charged with the payment of the amount for which judgment has been so recovered, and interest thereon, and the order entitles the judgment creditor to all such remedies as he would have been entitled to if the charge had been made in his favour by the judgment debtor; but no proceedings shall be taken to have the benefit of the charge until after the expiration of six months from the date of the order.

(2) Every such order shall be made in the first instance *ex parte* and without any notice to the judgment debtor and is an order to show cause only, and the order, if any government stock, funds or annuities standing in the name of the judgment debtor in his own right or in the name of any person in trust for him are to be affected, restrains any transfer thereof being made in the meantime and until the order has been made absolute or discharged; and if any stock or shares of or in any public company standing in the name of the judgment debtor in his own right or in the name of any person in trust for him are to be affected by the order, in like manner restrains such public company from permitting a transfer thereof.

COMMENTS

SECTION 145

Section 145 has been deleted for the same reason that section 144 has been deleted. Section 145 was also deleted by the Williston Committee.

SECTION 146

Deletion of section 146 implements a recommendation of the Ontario Law Reform Commission in its Report on the Enforcement of Judgment Debts and Related Matters (1981), Part II, p. 253. The section was also deleted by the Williston Committee.

DELETED PROVISIONS

COMMENTS

Judicature Act:

146-(3) If, after notice of such order to the person to be restrained thereby, or, in the case of a corporation, to any authorized agent of the corporation, and before the order is discharged or made absolute, the corporation or person permits any such transfer to be made, the corporation or person so permitting the transfer is liable to the judgment creditor for the value or amount of the property so charged and so transferred, or such part thereof as is sufficient to satisfy his judgment, and no disposition of the judgment debtor in the meantime is valid or effectual as against the judgment creditor

(4) Unless the judgment debtor, within a time to be mentioned in such order, shows to a judge sufficient cause to the contrary, the order shall, after proof of notice thereof to the judgment debtor, his solicitor or agent, be made absolute.

(5) A judge, upon the application of the judgment debtor or any person interested, may discharge or vary such order.

(6) This section extends to the interest of a judgment debtor, whether in possession, remainder, or reversion, and whether vested or contingent as well in any such stock, funds, annuities or shares, as also in the dividends, interest or annual produce of any such stock, funds, annuities or shares

(7) Where such a judgment debtor has an estate, right, title or interest, vested or contingent, in possession, remainder, or reversion in or to stock, funds, annuities or shares standing in the name of The Accountant of the Supreme Court or in or to the dividends, interest or annual produce thereof, the judge may make any order as to the stock, funds, annuities or shares, or the interest, dividends or annual produce thereof, in the same way as if the same had been standing in the name of a trustee of the judgment debtor

(8) No such order as to any stock, funds, annuities or shares standing in the name of the Accountant, or as to the interest, dividends or annual produce thereof, prevents any incorporated bank or any public company from permitting a transfer of the stock, funds, annuities or shares, or payment of the interest, dividends or annual produce thereof, in such manner as the Supreme Court directs, or has any greater effect than if the judgment debtor had charged the stock, funds, annuities or shares, or the interest, dividends or annual produce thereof, in favour of the judgment creditor with the amount of the sum mentioned in the order.

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DELETED PROVISIONS

Judicature Act:

147.—(1) In a penal action brought in good faith in which the defendant sets up a prior judgment, the plaintiff may reply in avoidance of the prior judgment that the prior judgment was had by covin or collusion, and no release by any person before or after action for a penalty is a ground for staying the action

(2) No plaintiff in such an action shall be permitted to set up by way of reply, or otherwise, a charge of covin or collusion, where the merits of the matter in question in the action or a like charge of covin or collusion have been once tried and found either for or against the plaintiff

148. No person shall sue as a common informer in a penal action unless he is *swi juris*

149. No penal action brought by a common informer shall be compounded without the leave of the court

150.—(1) Except in the cases mentioned in section 151, all proceedings against any person who unlawfully claims or usurps, or is alleged unlawfully to claim or to usurp any office, franchise or liberty, or who has forfeited or is alleged to have forfeited any franchise by reason of non-user or mis-user thereof, that were formerly instituted or taken by writ of *quo warranto*, or by information in the nature of a writ of *quo warranto*, shall be instituted and taken, where the proceeding is by the Attorney General *ex officio*, by notice of motion calling on the person against whom the proceeding is taken to show cause why he unlawfully exercises or usurps such office, franchise or liberty

(2) Where the proceeding is at the instance of a relator, it shall be taken in the name of Her Majesty on the relation of such person, and such person shall before serving the notice of motion give security for the due and effectual prosecution thereof in like manner as nearly as may be and in the like amount as is, according to the practice of the Supreme Court, required to be given on an application to quash a conviction or order made by a justice of the peace, or in such manner and amount as the court may direct

COMMENTS

SECTION 147

Section 147 has been deleted as obsolete. This section was also deleted by the Williston Committee.

SECTION 148

Section 148 has been deleted for the same reason that section 147 has been deleted. Section 148 was also deleted by the Williston Committee.

SECTION 149

Section 149 has been deleted for the same reason that section 147 has been deleted. Section 149 was also deleted by the Williston Committee.

SECTION 150

Section 150 is no longer necessary in light of the remedies available under the Judicial Review Procedure Act. Section 150 was also deleted by the Williston Committee.



DELETED PROVISIONS

Judicature Act:

150(3) The court may direct an issue for the trial of the matters in question on any such application, and may grant an injunction or a mandatory order in aid of the proceedings, or for the purpose of enforcing the judgment or order that is pronounced thereon

(4) The practice and procedure, including the right of appeal, shall be, in all other respects, in accordance with the ordinary practice and procedure of the Supreme Court

151.—(1) Where it is intended to call in question the right of any person claiming to be a municipal officer, or an officer of a school corporation, to the office that he claims to hold, exercise or occupy as such officer, or the right of a member of any school board or school corporation to have, hold or enjoy any office, either as a member of such board or corporation or otherwise under the school laws of Ontario, and subsection (2) does not apply to the trial and determination of such question, the matter shall be tried and determined by the judge of the county court of the county in which the duties of the office are to be performed, in a summary manner, and the proceedings shall be the same, as nearly as may be, as those provided for trying and determining a complaint respecting the validity or mode of conducting the elections of school trustees in an urban municipality, except that such judge has the same power to award costs to either party to the proceedings as he would have if the same were a proceeding in the county court

(2) Nothing in subsection (1) applies to or affects the proceedings in cases for which special provision is made by the municipal or school laws of Ontario, but in all such cases the proceedings shall be instituted and taken in the manner provided by those Acts, and not otherwise.

152. Nothing in this Act affects the practice or procedure in criminal matters or matters connected with Dominion controverted elections

COMMENTS

SECTION 151

Section 151 has been deleted for the same reason that section 150 has been deleted. Section 151 was also deleted by the Williston Committee.

SECTION 152

Section 152 has been deleted. There are provisions of the Courts of Justice Act that apply to criminal proceedings (see subsection 102(2)). In the absence of conflicting federal legislation, the province may enact provisions dealing with the administration of justice that affect criminal proceedings: Jones v. Attorney General of New Brunswick, [1975] 2 S.C.R. 182 at 197. Section 152 was also deleted by the Williston Committee.

DELETED PROVISIONS

COMMENTS

County Courts Act:

COUNTY COURTS ACT - DELETED PROVISIONS

1. In this Act, "chief judge" means the Chief Judge of the County and District Courts.

SECTION 1

Section 1 of the County Courts Act is unnecessary in the context of Part II of the Courts of Justice Act.

5. The clerk shall give security for the due performance of the duties of his office in such sum and in such manner and form as the Lieutenant Governor in Council directs.

SECTION 5

Section 5 is an obsolete provision. County and district court clerks are no longer required to post security.

6. The clerk shall keep his office in the court house or, if there is no room available therein, at such place in the county or district as the judge directs

SECTION 6

Section 6 has been deleted as unnecessary.

7.—(1) In this section, "holiday" means,

(a) a holiday as defined in the *Interpretation Act*;

(b) Saturday;

(c) the day proclaimed as Civic Holiday in the municipality in which the court office is located;

(d) the 26th day of December in a year in which Christmas Day falls on a day other than Saturday, or the 27th day of December in a year in which Christmas Day falls on a Saturday.

(2) Except on holidays when they shall be closed, county court and district court offices shall be kept open from 9.30 o'clock in the forenoon until 4.30 o'clock in the afternoon

SECTION 7

The new Rules will contain provisions respecting the days on which court offices are open and their hours of work. Section 7, therefore, is no longer necessary.

## DELETED PROVISIONS

### County Courts Act:

8.—(1) Subject to subsection (2), the clerk shall tax costs, subject to revision and appeal therefrom as provided by the rules of court

(2) Where costs are awarded on the Supreme Court scale, the party entitled thereto may require the costs to be taxed,

(a) in actions pending in the county courts of the Judicial District of Ottawa-Carleton and of the counties of Lanark, Leeds and Grenville, Stormont, Dundas and Glengarry, Russell, Renfrew or Prescott, by the taxing officer at Toronto or the local taxing officer at Ottawa;

(b) in actions pending in the county courts of the counties of Middlesex, Lambton, Elgin, Oxford or Perth, by the taxing officer at Toronto or the local taxing officer at London;

(c) in actions pending in all other county and district courts, by the taxing officer at Toronto

(3) The taxing officer at Toronto has power to tax costs required to be taxed under subsection (2), and, for the purposes of taxations required under subsection (2), the local taxing officers at Ottawa and London have the same powers as the taxing officer at Toronto

(4) An appeal lies to a Supreme Court judge from any certificate of a taxation required under subsection (2).

(5) The practice on taxations and appeals therefrom and the fees payable thereon shall be the same as in the Supreme Court

9. The clerk shall not for fee or reward draw or advise upon a chattel mortgage or other paper or document connected with the duties of his office, for which a fee is not expressly allowed by the tariff

## COMMENTS

### SECTION 8

The subject of assessment of costs is dealt with in the new Rules. Therefore, section 8 is no longer necessary.

### SECTION 9

Section 9 has been deleted as unnecessary. There is no corresponding provision for the registrars and clerks of other courts. A District Court local registrar who places himself in a situation involving a serious conflict of interest may be dismissed from office.



DELETED PROVISIONS

County Courts Act:

12. The judges of a county or district court may sit separately and concurrently for the despatch of the business of a sittings

13.—(1) Where the judge who is to hold a sitting is unable to hold it at the time appointed, the sheriff or, in his absence, the deputy sheriff shall adjourn the court by proclamation to an hour on the following day to be named by him, and so from day to day until the judge is able to hold the court or until he receives other directions from the judge or from the chief judge

(2) The sheriff shall forthwith notify the chief judge of the adjournment.

14.—(6) Where the court or a judge makes an order under subsection (2) allowing the defendant to question the jurisdiction of the court, the court or judge may direct the action to be transferred to the Supreme Court upon such terms as to costs and otherwise as is considered just.

(7) Where an action is transferred to the Supreme Court under this section, if the plaintiff is awarded costs, unless otherwise ordered by the court or a judge, the costs shall after the date of the transfer be taxed according to the scale of the Supreme Court, whether or not the action is in fact within the proper competence of the county or district court.

18. Prohibition does not lie in respect of an action or counterclaim that may be transferred under this Act to the Supreme Court, or from one county or district court into another county or district court.

COMMENTS

SECTION 12

The purpose of section 12 is unclear, since there does not appear to be any common law prohibition on judges of a county or district court sitting separately and concurrently. Subsection 24(2) of the Courts of Justice Act provides that the District Court is presided over by one judge. With the number of other District Court judges, it should be obvious that different judges can sit at the same time. Therefore, section 12 has been deleted.

SECTION 13

Section 13 has been deleted as unnecessary. It is similar to section 50 of the Judicature Act which harkens back to an era when transportation was much more difficult than today and judges often failed to appear on time to hold sittings.

SECTION 14

Subsection 14(6) has been deleted as unnecessary. Subsection 32(2) of the Courts of Justice Act, unlike subsection 14(2) of the County Courts Act, does not permit the disputing of the District Court's monetary jurisdiction after the filing of the statement of defence.

Subsection 14(7) has been deleted because the new Rules will establish a single tariff of costs for both the Supreme Court and the District Court.

SECTION 18

Since subsection 32(4) of the Courts of Justice Act provides a method for giving the District Court jurisdiction over an action that would otherwise be beyond its monetary jurisdiction, it is not necessary to say that prohibition will not lie. Therefore, section 18 has been deleted.

DELETED PROVISIONS

County Courts Act:

21. Except in the cases mentioned in subsections 14 (3), (5) and (6) and in section 15, no action shall be removed by order of *certiorari* or otherwise into the Supreme Court unless the debt or damages claimed amount to more than \$100, and then only on affidavit and by leave of a judge of the Supreme Court, if it appears to the judge fit to be tried in the Supreme Court, and upon such terms as to costs, giving security for debt or costs and otherwise as he considers just

22.—(1) Except by consent of the parties or unless the place of trial is changed, actions under clauses 14 (1) (c) and (d) shall be brought and tried in the court of the county or district in which the land is situate, and actions under clause 14 (1) (g) shall be brought and tried in the court of the county or district where the partnership has or had its principal place of business, and actions under clause 14 (1) (h) shall be brought and tried in the court of the county or district where letters probate or of administration have issued or where the deceased resided at the time of his death.

(2) Actions for the recovery of real property shall be brought and tried in the court of the county or district in which the real property sought to be recovered is situate

23. An action by or against a judge shall not be brought in the court of which he is judge, but shall be brought in the court of a county or district adjoining that in which he resides

24. Subject to the *Judicature Act* and to the rules of court, the practice and procedure of the Supreme Court apply to the county and district courts

25. Where the plaintiff fails to recover judgment by reason that the court has not jurisdiction, the court nevertheless has jurisdiction over the costs of the action or other proceeding and may order by and to whom they shall be paid

COMMENTS

SECTION 21

This section has been deleted for the same reason that section 18 has been deleted.

SECTION 22

The new Rules deal with the question of venue for District Court actions. Therefore, section 22 has been deleted.

SECTION 23

Section 23 has been deleted as unnecessary. The place of trial for actions by or against a District Court judge will be left to the common law. Often, the parties will choose to bring the action in a different court or in a different county or district. If the action is brought in the local court where the judge sits, another judge would normally be brought in from outside the county or district to hear the case.

SECTION 24

This section has been deleted as unnecessary. Section 88 of the Courts of Justice Act makes clear that the Rules of Civil Procedure apply to the District Court.

SECTION 25

The question of costs where the court does not have jurisdiction is dealt with in the new Rules. Therefore, section 25 has been deleted.

DELETED PROVISIONS

County Courts Act:

28.—(1) Where it is proper to direct a reference, it may be made to any officer to whom a reference may be directed by the Supreme Court or to the clerk of the court.

(2) Where the judge of the court is local master, the reference may be made to himself, but no fees shall be charged by him on such reference

(3) Upon every such reference the fees to be paid and the costs to be allowed, whether as between party and party or solicitor and client, shall be according to the county court tariff

29.—(1) In an action in a county or district court the judge has the same powers with regard to the making of an order of reference as may be exercised by a judge of the Supreme Court in an action therein

(2) An appeal, in like manner and within the same time as in like cases in actions in the Supreme Court, lies from the report on the reference to the judge of the county or district court in chambers, who has upon the appeal the same power as may be exercised by a judge in like cases in the Supreme Court

(3) An appeal lies from any order, judgment or decision of the judge of a county or district court, and from the report upon a reference made under subsection 28 (2) to the Court of Appeal, and the proceedings and practice on the appeal as to staying proceedings and otherwise shall be similar to the proceedings and practice relating to an appeal from a judgment under section 31.

(4) Nothing in this section empowers the judge of a county or district court to refer any proceeding to which Her Majesty is a party, or any question or issue in any such proceeding, to an official referee, without the consent of Her Majesty.

30-(7) An appeal lies from such judgment or finding in the same manner and on the same terms as if the judgment had been pronounced at a trial in the county court

COMMENTS

SECTION 28

The matter of references is dealt with in the new Rules. Therefore, section 28 is no longer necessary.

SECTION 29

Section 29 has been deleted for the same reason that section 28 has been deleted.

SECTION 30

Subsection 30(7) has been deleted as unnecessary. Appeals from orders of District Court judges are dealt with by subsection 35(1) of the Courts of Justice Act.



DELETED PROVISIONS

County Courts Act:

**32.** Where a party does not appear at the trial, a motion for a new trial may be made before the judge, but in all other cases a motion for a new trial shall be made before the Court of Appeal.

**34-(2)** This section does not apply to an order or decision that is not final in its nature but is merely interlocutory or where jurisdiction is given to the judge as *persona designata*

**35.**—(1) The clerk shall, at the request of the appellant, transmit to the proper officer of the Supreme Court the pleadings in the cause and all motions or orders made, granted or refused therein together with the judgment or decision and all other papers in the cause affecting the question raised by the appeal.

(2) The evidence and all objections and exceptions thereto, together with the judge's charge to the jury where the trial has been held with a jury, shall be certified under the hand of the stenographic reporter who was present at the trial.

**36.** Subject to section 37, the judge of the county or district court appealed from may, upon application to him, stay proceedings in the action to enable the appeal to be brought, upon such terms and for such time as he considers just.

**37.** The appeal shall be made within the time and in the manner prescribed by the rules of court.

COMMENTS

SECTION 32

Section 32 has been deleted as obsolete. Motions for new trials no longer exist. The appropriate modern remedy is to appeal the decision of the court.

SECTION 34

Subsection 34(2) has been deleted as unnecessary in light of the abolition of persona designata by section 90 of the Courts of Justice Act.

SECTION 35

Section 35 has been deleted as unnecessary. It deals with an administrative matter that does not require statutory attention.

SECTION 36

The question of stays pending appeal is dealt with in the new Rules. Therefore, section 36 has been deleted as unnecessary.

SECTION 37

Appeals from the District Court go to the Supreme Court. Therefore, the appeals must be made in accordance with the rules of the Supreme Court. Section 37 is unnecessary.

DELETED PROVISIONS

County Courts Act:

~~39-(2)~~ The decision of the Court of Appeal shall be certified by the registrar of the court to the clerk of the court with whom the judgment or order appealed from was entered, who shall thereupon cause the decision to be entered in the proper judgment or order book, and all subsequent proceedings may be taken thereupon as if the decision has been given in the court below

~~41.~~ Subject to the approval of the Lieutenant Governor in Council, the Rules Committee may,

- ~~(a)~~ make rules for regulating the practice and procedure in the county and district courts;
- ~~(b)~~ prescribe a tariff of fees to be allowed to solicitors and counsel practising in such courts;
- ~~(c)~~ prescribe forms and provide for their use.

COMMENTS

SECTION 39

Subsection 39(2) deals with the entry of the decision of the Court of Appeal on an appeal from the county or district court. This matter is dealt with in the new Rules.. Therefore, subsection 39(2) has been deleted as unnecessary.

SECTION 41

Section 88 of the Courts of Justice Act permits rules to be made for the District Court. Therefore, section 41 is unnecessary.

DELETED PROVISIONS

County Judges Act:

5-(2) Any reference in this or any other Act or in a regulation to a judge includes a supernumerary judge.

8. A judge shall not, directly or indirectly, practise as counsel or solicitor or act as a notary public or conveyancer.

9. Where a judge who has appointed a time and place for the hearing of an application, proceeding or matter becomes ill or dies, or for any other reason is unable to attend at the time and place appointed, the application, proceeding or matter may be heard by another judge of the same county or district court or by a judge who may for the time being be acting as a judge of such court.

10-(2) Nothing in this section applies to or affects the payment of any allowance or fees to a judge of a county or district court with respect to any office that may be lawfully held by him in addition to his office as judge to which an annual allowance or salary is attached or in the performance of his duties as an arbitrator or referee under any statute designating him by his name of office as an arbitrator or referee.

(3) Nothing in this section affects or prevents the payment to a judge of a county or district court of his travelling or other expenses when called upon to perform any duty outside the county or district town of the county or district.

12. Where there is more than one judge available in a county or district, the county or district court, the court of general sessions of the peace and the small claims courts may sit at the same time and the business in them may be proceeded with simultaneously.

COMMENTS

COUNTY JUDGES ACT - DELETED PROVISIONS

SECTION 5

Subsection 5(2) has been deleted as unnecessary. There is no corresponding provision respecting super- numerary judges of the Supreme Court.

SECTION 8

Section 8 has been deleted as unnecessary. The matter of extra-judicial employment of federally-appointed judges is dealt with in section 36 of the Judges Act (Canada).

SECTION 9

Section 9 has been deleted as unnecessary. It may have been included in the County Judges Act to overcome problems with county and district court judges acting as persona designata. However, the concept of persona designata is abolished by section 90 of the Courts of Justice Act and, in any case, there are no corresponding provisions dealing with this issue with respect to judges of other courts.

SECTION 10

The issue of fees and expenses of District Court judges is dealt with by sections 37 and 38 of the Judges Act (Canada). Therefore, subsections 10(2) and (3) of the County Judges Act have been deleted.

SECTION 12

Section 12 has been deleted as unnecessary. There does not appear to be any common law prohibition on judges of the same court sitting separately, much less any prohibition on judges of different courts sitting separately.



DELETED PROVISIONS

COMMENTS

County Judges Act:

13. The chief judge may empower a judge of a county or district court to hear and dispose of or otherwise deal with any matter depending in his court at any place either within or outside the county or district, as the case may be.

14-(2) Every court reporter shall be under the direction of the judge or senior judge or, if the senior judge is absent, of the other judges of the county or district for the local court of which he is appointed, and, where a senior court reporter is designated, the other court reporter or reporters shall also be subject to the direction of the senior court reporter.

16-(2) The chief judge shall occupy chambers at Toronto.

(6) The chief judge and the judges of the county and district court district shall discuss and consider the time and other requirements of the various courts in the county or district court district, having regard to the efficient administration of justice in Ontario, and shall make such arrangements as may be necessary or proper for the holding of such courts, including chambers, and the transaction of such business as are customarily held and transacted by the judges of the county or district court district with power in the chief judge to make such readjustment or reassignment as he considers necessary or proper from time to time.

(7) In the arrangement of the courts and the assignment of judges thereto, regard shall be had to,

(a) the desirability of rotating the judges within each county and district court district; and

(b) the greater volume of judicial work in certain of the counties and districts,

but no judge shall be required to sit outside his county or district court district, as the case may be, without his consent.

SECTION 13

Section 13 is not necessary given the province-wide jurisdiction of the District Court and its judges.

SECTION 14

Subsection 14(2) has been deleted pending further discussions with the judiciary.

SECTION 16

Subsection 16(2) has been deleted as unnecessary.

Subsections 16(6) and (7) have been deleted as unnecessary. General authority over the sittings of the District Court and the assignment of judicial duties is given to the Chief Judge of the District Court and the senior judges of the District Court regions by subsections 26(1) and 27(1) of the Courts of Justice Act.

DELETED PROVISIONS

County Judges Act:

17.—(1) A judge may perform any judicial or other function or duty or exercise any power in any county or district in the same manner and to the same effect as a judge of that county or district.

(2) Any judge, with the approval of the chief judge, may perform any judicial or other function or duty or exercise any power under subsection (1) notwithstanding that he is not present in the county or district.

18. Where a vacancy occurs in the office of the judge of the county or district court in a county or district in a court district and the Lieutenant Governor declares that, owing to the lack of sufficient business, it is unnecessary that the vacancy be filled, the remaining judges in the court district shall arrange for the performance of the duties of the judge of the county or district court of the county or district in which the vacancy occurs by one of themselves or by some other person competent by law in that behalf, and every judge or other person so acting has the like powers and shall perform the like duties as a judge or other person competent by law in that behalf appointed or authorized for that purpose may exercise and perform under any statute of Ontario in the county or district in which the vacancy has occurred.

COMMENTS

SECTION 17

Section 17 is not necessary given the province-wide jurisdiction of the District Court and its judges.

SECTION 18

Section 18 has been deleted as unnecessary. There is no corresponding provision dealing with this matter for the other courts.

DELETED PROVISIONS

Unified Family Court Act:

1. In this Act,

- (a) "county court" includes a district court;
- (b) "Court" means the Unified Family Court;
- (c) "Judge" means a judge who may preside over the Court.
- (d) "judicial district" means the Judicial District of Hamilton-Wentworth.

3-(5) A Judge is *ex officio* a justice of the peace.

4-(2) The Unified Family Court has and may exercise such other jurisdiction as is conferred upon it by or under any Act.

(4) The jurisdiction of the Court shall be exercised by a Judge.

7.-(1) The Court shall have an office and hold sittings in the judicial district.

8. (2) Sections 27, 34, 36, 37, 38, 79, 80 and 122 of the *Judicature Act* apply to the Court and to Judges presiding in the Court, with necessary modifications.

COMMENTS

UNIFIED FAMILY COURT ACT - DELETED PROVISIONS

SECTION 1

Section 1 has been deleted as unnecessary in the context of Part III of the Courts of Justice Act.

SECTION 3

Subsection 3(5) has been deleted since all judges of the Unified Family Court are District Court judges and, under section 1 of the Justices of the Peace Act, all District Court judges are justices of the peace.

SECTION 4

Subsection 4(2) has been deleted as unnecessary. Where another statute gives jurisdiction to the Unified Family Court, it is not necessary for the grant of jurisdiction to be repeated in the Courts of Justice Act.

Subsection 4(4) is unnecessary given subsection 38(1) of the Courts of Justice Act.

SECTION 7

Subsection 7(1) has been deleted as unnecessary.

SECTION 8

Subsection 8(2), which incorporates several provisions of the Judicature Act, has been deleted. Sections 27, 34, 36, 37, 38, 79, 80 and 122 of the Judicature Act are dealt with by, respectively, section 136 of the Courts of Justice Act, a provision in the new Rules, sections 131, 132, 110, 107 and 134 of the Courts of Justice Act, and subsection 197(1) of the Courts of Justice Act.



DELETED PROVISIONS

Unified Family Court Act:

10. The Court may exclude the public from a hearing, or any part thereof, where, in the opinion of the presiding Judge, the desirability of protecting against the consequences of possible disclosure of intimate financial or personal matters outweighs the desirability of holding the hearing in public.

11.—(1) Where a proceeding is commenced in the Court in a matter respecting which jurisdiction may not be exercised in the Court, the Court may order by and to whom the costs of the proceeding shall be paid.

(2) The Court may direct a reference to any officer of the Court in accordance with the rules of the Court

12.—(2) The imposition of a penalty under subsection (1) may be made conditional upon default in the performance of an undertaking and an order for imprisonment may provide for the imprisonment to be served intermittently

13. Where a Judge ceases to hold office, he may within eight weeks give judgment or make an order or decision in a proceeding previously heard by him as if he had continued in office.

20. Every Judge shall take and sign the following oath of office before commencing his duties:

I, ..... swear (or solemnly affirm) that I will truly and faithfully execute the duties, powers and trusts of a Judge presiding over the Unified Family Court, to the best of my skill and knowledge

So help me God (Omit this line in an affirmation)

23.—(1) Where a proceeding is commenced in the Provincial Court (Family Division) of the Judicial District of Hamilton-Wentworth before the 5th day of February, 1977 and no evidence has been heard in the proceeding before that date, other than in respect of an interim order, the proceeding shall be deemed to be an application in the Unified Family Court subject to such directions as the court considers appropriate.

(2) The Provincial Court (Family Division) of the Judicial District of Hamilton-Wentworth continues to exist for the purpose of completing proceedings commenced in it before the 5th day of February, 1977 and to which subsection (1) does not apply.

COMMENTS

SECTION 10

Section 10 has been replaced by section 138 of the Courts of Justice Act.

SECTION 11

Section 11 will be replaced by new rules for the Unified Family Court.

SECTION 12

Subsection 12(2) has been deleted as unnecessary. These powers are part of the court's discretion in imposing penalties for contempt.

SECTION 13

Section 13 has been replaced by section 126 of the Courts of Justice Act.

SECTION 20

Section 20 has been replaced by section 89 of the Courts of Justice Act.

SECTION 23

Subsections 23(1) and (2) have been deleted. By the time the Courts of Justice Act comes into force, the subsections will no longer serve any continuing purpose.

## DELETED PROVISIONS

### Provincial Courts Act:

#### 1. In this Act,

- (a) "judge" means a provincial judge appointed under this Act;
- (b) "Judicial Council" means the Judicial Council for Provincial Judges referred to in section 7;
- (c) "Minister" means the Attorney General.

3.-(2) The oath of office and oath of allegiance shall be transmitted forthwith to the Inspector of Legal Offices and shall be filed in his office.

8.-(1) Every judge has jurisdiction throughout Ontario and,

- (b) has all the power and authority vested by or under any Act of the Legislature in a magistrate, two justices of the peace sitting together or a juvenile and family court or a judge thereof;

10.-(5) In the arrangement of the courts and the assignment of judges thereto, regard shall be had to,

- (a) the desirability of rotating the judges; and
- (b) the greater volume of judicial work in certain of the counties and districts.

24. A judge shall exercise the powers and perform the duties vested in him as a judge of the juvenile and family court under section 9 sitting in a provincial court (family division).

## COMMENTS

### PROVINCIAL COURTS ACT - DELETED PROVISIONS

#### SECTION 1

Section 1 of the Provincial Courts Act is unnecessary in the context of Part IV of the Courts of Justice Act.

#### SECTION 3

Subsection 3(2) has been deleted as unnecessary. This subsection deals with an administrative matter that does not require statutory attention.

#### SECTION 9

Clause 9(1)(b) has been deleted as unnecessary. Provincial statutes have been revised to replace references to magistrates, two justices of the peace sitting together or a juvenile or family court with references to a provincial judge or the appropriate provincial court.

#### SECTION 10

Subsection 10(5) has been deleted as unnecessary. Sittings of the provincial courts and the assignment of judges are dealt with by the chief judges and the senior judges under subsections 63(3) and 64(2) of the Courts of Justice Act.

#### SECTION 24

Section 24 has been deleted as unnecessary. There are no longer any provincial statutes that refer to juvenile and family courts. The only federal statute that refers to juvenile courts is the Juvenile Delinquents Act, and jurisdiction under that statute is dealt with under clause 77(a) of the Courts of Justice Act.



DELETED PROVISIONS

Provincial Courts Act:

26. The officers and members of the staff of a provincial court (family division) shall act in accordance with the directions of the presiding judge of the court.

32-(5) Section 80 of the *Judicature Act* applies to the provincial court (family division) and to judges presiding in the court.

COMMENTS

SECTION 26

This provision has been deleted pending further discussions with the judiciary.

SECTION 32

Subsection 32(5) has been deleted as unnecessary. The question of costs in the Provincial Court (Family Division) is now dealt with by section 134 of the Courts of Justice Act.



## DELETED PROVISIONS

Provincial Court (Civil Division) Act:

### 1. In this Act,

(a) "Advisory Committee" means the advisory committee referred to in section 8;

(c) "Provincial Court" means the Provincial Court (Civil Division);

(d) "rules" means the rules made under or adopted by this Act.

7(1) A proceeding commenced in a small claims court in The Municipality of Metropolitan Toronto before the 30th day of June, 1980 or in a designated area before the effective date of the designation shall be continued and disposed of in the Provincial Court.

8.—(1) There shall be an Advisory Committee composed of seven persons of whom one shall be the Deputy Attorney General, who shall be the chairman, one shall be the senior judge of the Provincial Court or his nominee and five shall be appointed by the Attorney General, of whom one shall be a county court judge and at least two shall be members of the Law Society of Upper Canada engaged in active litigation practice.

(2) The Deputy Attorney General may designate a member of the Advisory Committee who shall act as chairman during the absence of the Deputy Attorney General.

(3) The Advisory Committee shall advise and make recommendations to the Attorney General on any matter concerning the establishment and operation of the Provincial Court and the practices and procedures therein that the Advisory Committee considers advisable or that is referred to it by the Attorney General.

9.—(2) Any rule made under subsection (1) may be general or particular in its application.

## COMMENTS

PROVINCIAL COURT (CIVIL DIVISION) ACT - DELETED PROVISIONS

### SECTION 1

Clause 1(a) has been deleted as unnecessary in light of the deletion of section 8 of the Act.

Clauses 1(c) and (d) have been deleted as unnecessary in the context of sections 80 to 83 of the Courts of Justice Act.

### SECTION 7

Subsection 7(1) has been deleted as it no longer serves any purpose.

### SECTION 8

Section 8 has been deleted. The Advisory Committee established by this section was active in the early days of the Provincial Court (Civil Division) experiment. As the Court became more established, the Advisory Committee ceased to meet. It has been inactive for some time.

### SECTION 9

Subsection 9(2) has been deleted as unnecessary.







